

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ARIZONA
3

4
5 In Re: Bard IVC Filters) MD-15-02641-PHX-DGC
6 Products Liability Litigation)
7) Phoenix, Arizona
8) May 22, 2018
9)
10 Doris Jones, an individual,) 1:00 p.m.
11)
12) Plaintiff,)
13)
14) vs.) CV 16-00782-PHX-DGC
15)
16)
17 C.R. Bard, Inc., a New)
18 Jersey corporation; and Bard)
19 Peripheral Vascular, Inc., an)
20 Arizona corporation,)
21)
22) Defendants.)
23)
24)
25)

14 BEFORE: THE HONORABLE DAVID G. CAMPBELL, JUDGE

15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 (Jury Trial - Day 5 - P.M. Session)
17 (Pages 1077 through 1189, inclusive.)
18
19
20

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28 By Mr. Rogers

1083

29 By Mr. Combs

1104

30 ANTHONY AVINO, M.D.

31 By Video Deposition

1117

32 SHANICE JONES

33 By Mr. O'Connor

1118

34 ALEX TESSMER

35 By Mr. Stoller

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36 By Mr. Rogers

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37 DORIS JONES

38 By Mr. O'Connor

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EXHIBIT	INDEX OF EXHIBITS	RECEIVED
79	Test Protocol TPR-04-02-02	1082
447	(No description available)	1082
546	Altonaga 04, 4/13-4/15/2004 E-mail Exchange b/w Lee Lynch, Lehmann, and others Re: "Crisis Plan and Supporting Documents For Your Review"	1082
614	(No description available)	1082
677	Filter - Fracture Analysis August 2010, Reporting range 7/1/05 - 8/31/10, G2, G2X, And Eclipse	1082
854	12/12/2004 E-mail from Uelmen to Kellee Jones, attaching 12/9 /2004 Remedial Action Plan (Revised) SPA-04-12-01	1082
932	BPV's 5/6/2008 PowerPoint presentation Entitled "Filter Franchise Review", Including charts of 2007 U.S. Market Share By \$ and U.S. filter sales history	1082
1006	12/9/2003 Meeting Minutes Memo from Brian Hudson to Len DeCant, Mike Casanova, Robert Carr, and Alex Tessmer Re:	1082
1023	"Special Design Review for Recovery Internal Presentation on the G2 Filter System for Permanent Use, detailing the Design modifications, features/benefits, And comparison to the Recovery Filter	1082
1133	Recovery Filter Arm Fracture, Remedial Action Plan September 2, 2004	1116
1295	3/23/2006 E-mail exchange b/w Mickey Graves and Charlie Simpson, FEA on G2, Regarding Historical FEA analysis	1082
1369	3/24/2004 E-mail from Alex Tessmer to Charlie Benware and Ed Fitzpatrick Re: "Starguide Filter Migration Test Results"	1082
1370	12/11/2003 E-mail exchange b/w Brian Hudson and Janet Hudnall, others CC'ed, Re: "Special Design Review for Recovery Meeting Minutes"	1082
1383	Hudson Deposition, 01/17/2014, Exhibit 13 - BPV Engineering Test Report - Characterization of Recovery Filter Migration Resistance in Comparison to Competitive Product - Phase 1, ETR-04-03-02, Rev 0.	1082

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<u>EXHIBIT</u>		<u>RECEIVED</u>
1580	Kessler Report -July 12, 2004	
	Email from Bard's VP of Regulatory	
	Sciences Chris Ganser, to Tim Ring	
	And John Weiland, attached "an executive	
	Summary of Recovery Filter adverse events	
	(Migration and fracture	1082
1612	(No Description Available)	1082
2052	(No Description Available)	1082
2057	Recovery Filter Migration Remedial	
	Action Plan SPA-04-12-01 dated 1/4/2005,	
	Including the Lehmann Report and	
	Dr. Ciavarella's 12/17/2004 HHE titled	
	"Recovery Filter - Consultant's report	1082
2059	Project Status Report Form for the	
	Recovery Filter, Project No. 7081,	
	Initiated 7/1/2002 with the goal to	
	"Investigate Migration"; FM0700160, Rev. 1.	1082
2061	2/4/2004 E-mail from Alex Tessmer to	
	Several Re: "Updated: Filter Migration	
	Flow Loop Test Fixture"	1082
2062	1/14/2004 Memo from Rob Carr to File	
	Re "Design Review Meeting Minutes Response"	1082
2063	2/25/2004 E-mail from Alex Tessmer to	
	Robert Carr and Brian Hudson Re:	
	"Filter Migration Test Results	1082
2065	BPV Engineering Test Report -	
	Characterization of Recovery Filter	
	Migration Resistance When Legs are	
	Crossed or Hooks Removed - Phase 2	1082
2068	E-mail from Tessmer to Carr and others	1082
2069	8/26/2004 E-mail from Alex Tessmer to	
	Robert Carr and Avijit Mukherjee Re:	
	"Corporate Presentations"	1082
2238	9/25/2007 E-mail from John Lehmann to	
	John Van Vleet and John Reviere	
	Re: "EVEREST FSR rev H and	
	Supporting redlines	1082
2253	5/27/2004 E-mail from Natalie Wong to	
	Doug Uelmen Re. "Recovery Stats"	1082
4401	Implant op report with Avino 8/24/2010	1116
4402	Product ID/sticker 8/24/2010 (1 page)	1116
4403	Chest x-ray report discovers filter	
	Fragment in pulm artery 4/22/15 (1 page)	1082
4404	CT Angiogram report 4/22/15 (2 pages)	1082
4405	8/14/13 XR Chest PA/LAT report	1082

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4406	Retrieval and discharge records 4/22-24/15 (7 pages)	1082
4407	Removal bills	1082
4412	Email from: Gin Schulz to Kevin Shifrin Regarding Recovery Filter Limb Fractures with attachment of RF Limb detach	1082
4420	Meridian Vena Cava Filter and Jugular Delivery System Product Performance Specification PPS, Revision 3	1082
4459	Eclipse Vena Cava Filter Jugular Vein Approach IFU	1082
4486	G2 Express Project Plan FM0700150 Rev 6 1-30-07	1082
4536	4-22-15 XR Chest Pa/LAT of Doris Jones (2 images)	1082
4537	4-22-15 Topogram of Doris Jones	1082
5296	G2 Filter Product Performance Specification v.2	1082
5302	G1A Recovery Filter Femoral System Design Verification and Validation Protocol	1082
5303	G2 DV&V Summary Testing	1082

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P R O C E E D I N G S

THE COURT: Ms. Helm, there was that long list of exhibits that were moved in at the beginning of the day. I think you have had a chance to review them now.

MS. HELM: I have, Your Honor. And I spoke with Traci and she suggested I read the list again.

THE COURT: Are you objecting to any of those?

MS. HELM: Some of them are subject to redaction, and I will say that when I get to the number.

THE COURT: But as redacted you are okay with admitting?

MS. HELM: Yes, Your Honor.

So we have no objection to 79; 447; 546, subject to redactions; 614; 677; 854, subject to redactions; 926, subject to redactions; 932; 1006; 1023; 1133; 1295; 1369; 1383; 1580, subject to redactions; 1612; 2052; 2057, subject to redactions; 2059; 2061; 2062; 2063; 2065; 2068; 2069; 2238; 2253; 4403; 4404; 4405; 4406; 4407; 4412; 4420, subject to redactions; 4459; 4486; 4536; 4537; 5296; 5302; 5303.

THE COURT: All right. Those exhibits are admitted.

Were there any in Mr. Clark's list that you did not just mention, Ms. Helm?

MS. HELM: I'm sorry. Apparently -- yes, Your Honor. Apparently I missed one and it's Exhibit 1370. And we have no objection.

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1 THE COURT: Okay. That exhibit is admitted as well.

2 Mr. Rogers, you can continue with your
3 cross-examination.

4 MR. ROGERS: Thank you, Your Honor.

5 CROSS-EXAMINATION (Resumed)

01:04PM

6 BY MR. ROGERS:

7 Q. Hello, Dr. Hurst.

8 A. Hi. How are you.

9 Q. I'm going to pick up kind of where I left off. And right
10 before the lunch break, we were discussing whether Mrs. Jones'
11 strut that is in the -- her pulmonary artery had
12 endothelialized. Do you recall that?

01:04PM

13 A. Yes.

14 Q. I believe you will agree with me that means some tissue has
15 grown around that strut, is that correct?

01:05PM

16 A. Correct.

17 Q. And Doctor, would you also agree that you have not seen any
18 evidence that Mrs. Jones's strut in the pulmonary artery has
19 moved since it was first identified in 2015.

20 A. I have not.

01:05PM

21 Q. And would you agree with me that the odds of that strut
22 moving are very small?

23 A. I would agree they are small.

24 Q. And would you agree that the strut is not occluding the
25 artery or blocking any blood flow in Ms. Jones?

01:05PM

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1 A. It is not currently.

2 Q. And Doctor, let me ask you about some of the things that
3 you said were possibilities that could happen in regard to that
4 strut in the future. Do you recall that testimony?

5 A. Yes.

01:05PM

6 Q. And Doctor, I believe you said that you just didn't know
7 how likely any of those things were to occur. Do you recall
8 that?

9 A. I don't think anyone knows.

10 Q. And Doctor, are there a lot of things in medicine that we
11 just don't know?

01:06PM

12 A. Yes.

13 Q. And Doctor, would you also agree with me that when you are
14 advising a patient there are really no always in medicine.
15 Would you agree with that?

01:06PM

16 A. That is true.

17 Q. And Doctor, in regard to the strut, I believe you said that
18 it may be a source of infection, it could potentially migrate,
19 and it could potentially perforate her pulmonary artery into
20 the lung. Is that right?

01:06PM

21 A. Correct.

22 Q. And Doctor, would you agree with me that the likelihood of
23 any of those things occurring, even though we don't know for
24 sure, would be around 1 percent?

25 A. We have no idea.

01:06PM

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1 Q. And Doctor, would you disagree with me that you have
2 testified previously in your deposition in this case that the
3 likelihood of those events occurring would be 1 percent or
4 less?

5 A. I think I did testify to that.

01:06PM

6 Q. And Doctor, would you also agree that the likelihood of
7 Mrs. Jones experiencing any injury, serious injury or death
8 from that strut is 1 percent or less?

9 A. It's -- I think it probably is around 1 percent or less.

10 But again, I'm not sure we know.

01:07PM

11 Q. Okay. Can we pull up Exhibit 4406, please, which just got
12 moved into evidence.

13 And Doctor, do you have the exhibit there on your
14 screen?

15 A. I do.

01:07PM

16 MR. ROGERS: And may we publish the exhibit to the
17 jury, Your Honor?

18 THE COURT: Yes.

19 BY MR. ROGERS:

20 Q. And Doctor, would you agree with me that this is -- well,
21 how about turn to Page 3 of that document.

01:07PM

22 And Doctor, would you agree with me that this is a
23 medical record that relates to when Mrs. Jones was discharged
24 from the hospital in April of 2015 after her filter had been
25 removed?

01:08PM

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1 A. This is a discharge summary, yes.

2 MR. ROGERS: And Scott, if you would, can you pull up
3 that section there under the discharge diagnoses, please.

4 BY MR. ROGER:

5 Q. And Doctor, are these the discharge diagnoses from that
6 record that were made by her treating doctors at the time?

01:08PM

7 A. Yes.

8 Q. And do you see the very first one there is the foreign body
9 embolism, and it says: Status post-IVC filter removal and IVC
10 filter component remaining in the right pulmonary artery.

01:08PM

11 Correct?

12 A. I agree.

13 Q. And we have already discussed that. And then Number 2, do
14 you see that?

15 A. Uh-huh.

01:08PM

16 MR. ROGERS: Scott, if you could highlight that,
17 please.

18 BY MR. ROGERS:

19 Q. And would you agree with me that that says: Bilateral arm
20 paresthesias secondary to iron deficiency. Do you see that?

01:08PM

21 A. Yes.

22 Q. And Doctor, would you agree that the term "secondary" means
23 that the doctor who made this diagnosis believed that the cause
24 of the bilateral arm pain that Mrs. Jones experienced was due
25 to iron deficiency?

01:09PM

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1 A. Okay.

2 Q. And you don't dispute that, do you, Doctor?

3 A. I don't dispute that that was his diagnosis.

4 Q. Doctor, let's turn to your opinions about the Eclipse IFU.

5 MR. ROGERS: And Scott, if you would, would you mind
6 pulling up Exhibit 8325.

01:09PM

7 And, Your Honor, do you mind if we display this to the
8 jury, please?

9 THE COURT: No. You may.

10 BY MR. ROGERS:

01:09PM

11 Q. Doctor, as I understand your opinions about this IFU, you
12 are partially critical about it because you say it provides too
13 much information about complications, but yet you also believe
14 it does not provide enough information about the rate and
15 severity of certain complications. Is that true?

01:09PM

16 A. It provides a laundry list of complications but yet doesn't
17 provide any specificity about incidence or seriousness of
18 complications.

19 MR. ROGERS: Okay. Scott, go to the next page,
20 please, and next page.

01:10PM

21 BY MR. ROGERS:

22 Q. Doctor, this page that's up here, I believe you said that
23 the first thing that an IFU needs to do is provide doctor some
24 information about how to use the device. Is that correct?

25 A. That is correct.

01:10PM

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1 Q. And would you agree with me that the Eclipse IFU does that?

2 A. Absolutely.

3 MR. ROGERS: And so would you please go, Scott, now to
4 Section E, which is the warning section.

5 BY MR. ROGERS:

01:10PM

6 Q. And Doctor, you previously testified about this portion of
7 the IFU, correct?

8 A. I did.

9 Q. And let's pull out the portion about fracture, please,
10 which I believe is Paragraph 11.

01:10PM

11 And Doctor, the first sentence says: Filter fractures
12 are known complication of vena cava filters. And you agree
13 that's an accurate statement, correct?

14 A. I agree that is.

15 Q. And the next sentence says: There have been some reports
16 of serious pulmonary and cardiac complications with vena cava
17 filters requiring the retrieval of the fragment utilizing
18 endovascular and/or surgical techniques. And you would agree
19 with that, correct?

01:11PM

20 A. Yeah. There have been some reports, actually probably more
21 than some.

01:11PM

22 Q. And Doctor, I believe that you said that one of the issues
23 you had with this portion of the IFU is you believed it implied
24 that if there is a fragment that it can always be removed via
25 surgical techniques. Is that right?

01:11PM

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1 A. Endovascular or surgical techniques, yes.

2 Q. Doctor, you would agree with me still, though, there are no
3 always in medicine. Correct?

4 A. Absolutely.

5 Q. And Doctor, when you were counseling patients about a
6 procedure that you are going to perform, you don't counsel them
7 that you will always be successful every single time you do
8 that procedure, correct?

01:12PM

9 A. You don't.

10 Q. And let's move on down to a section called precautions,
11 which is Section F. Well, this section is called precautions.
12 Do you agree?

01:12PM

13 A. Yes.

14 Q. And the first thing is the section relates to Eclipse
15 Filter implantation, correct?

01:12PM

16 A. Yes.

17 Q. And does the IFU provide information about certain
18 precautions that an implanting physician such as yourself
19 should take when they implant an IVC filter?

20 A. Yes, it does.

01:13PM

21 MR. ROGERS: Let's scroll on down please, Scott. And
22 keep on going. We're going to go down to the next section,
23 please.

24 BY MR. ROGERS:

25 Q. And then we have a section on Eclipse Filter removal. Do

01:13PM

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1 you see that?

2 A. Yes.

3 Q. And are these precautions that a doctor such as yourself
4 should take when they are going to remove a filter?

5 A. Yes.

01:13PM

6 MR. ROGERS: And Scott, if you would, can you blow up
7 the section entitled "note" in bold.

8 BY MR. ROGERS:

9 Q. And Doctor, I'm going to read this section and ask you to
10 follow along with me if you would. But it reads: Note,
11 standards and guidelines developed by the Society of
12 Interventional Radiologists recommend that patients with
13 filters, either permanent or retrievable, be tracked and
14 receive routine follow-ups subsequent to the placement of the
15 device.

01:13PM

01:13PM

16 Did I read that correctly?

17 A. You did.

18 Q. And Doctor, you are a member of the Society of
19 Interventional Radiologists, correct?

20 A. Yeah.

01:14PM

21 Q. And you agree with the statement that patients who receive
22 IVC filters, either permanent or retrievable filters, should
23 receive routine follow-up?

24 A. Depends what you call routine follow-up, but yes.

25 Q. That has quotes around it, so it came directly from the

01:14PM

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1 standards and guidelines of the SIR, correct?

2 A. It did. The guidelines were very general.

3 Q. So are you critical of the guidelines of the organization
4 of which are you a member of?

5 A. Yes. Can I finish my sentence here? Specifically, these
6 guidelines were for permanent filters. The retrievable
7 filters, they put out new guidelines but the wording didn't
8 change.

01:14PM

9 Q. I see. And I'm assuming, Doctor, you were not involved in
10 the drafting of the guidelines. Is that right?

01:14PM

11 A. No.

12 Q. And you have never served on any committee that relates to
13 those guidelines?

14 A. No.

15 Q. And would you defer to doctors who were involved in the
16 process of drafting those guidelines as to what they mean?

01:14PM

17 A. Sure.

18 Q. And let's move on, please, to the next section called
19 potential complications, Section G.

20 And if you would pull that out, Scott. Thank you.

01:15PM

21 And Doctor, briefly, if you follow along with me,
22 under the section there at the very top, it says that first,
23 complications may occur at any time during or after the
24 procedure. Do you agree with that?

25 A. Yes.

01:15PM

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1 Q. And the next sentence says: Possible complications include
2 but are not limited to the following. And the first bullet
3 point, that is essentially a repeat of the section that I
4 believe you looked at on movement and migration. Is that
5 right?

01:15PM

6 A. It is.

7 Q. And Doctor, you would agree with me, would you not, that
8 the second -- or excuse me -- the third sentence there says:
9 There have also been reports of caudal migration of the filter,
10 is that correct?

01:15PM

11 A. Yeah. That infers that there's been a few reports of
12 caudal migration. Doesn't give an incidence.

13 Q. And the word "few" does not appear in there, does it,
14 Doctor?

15 A. It just says "reports" so it's very general.

01:16PM

16 Q. Doctor, have you ever heard of a term called micromovement
17 in regard to caudal migration?

18 A. No.

19 Q. Let's look at the second bullet point. It says: Filter
20 fractures are a known complication of filters. And that's
21 something we just covered, correct?

01:16PM

22 A. Yes.

23 Q. And then the third bullet point, again -- Scott, if you
24 would highlight that, and Doctor, if you would follow along, it
25 reads: Perforation or other acute or chronic damage of the IVC

01:16PM

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1 wall. Do you see that?

2 A. Yes.

3 Q. You would agree that that warns about potential
4 perforation, correct?

5 A. Doesn't give an incidence, but it does warn that it is a
6 complication.

01:16PM

7 Q. And moving on down, if you would, to the -- let's see.
8 Keep going there, Scott.

9 A. There's a lot of them.

10 Q. And let's hold up here. And then on that little point
11 there where your cursor is, would you highlight that, please?
12 That says filter tilt, correct, Doctor?

01:16PM

13 A. Again, not giving the incidence, but it does say filter
14 tilt.

15 Q. This is the portion of the warning that you think provides
16 so much information it really is meaningless, is that correct?

01:17PM

17 A. Yes.

18 Q. Let's move on down to the next section, please.

19 And Scott, would you mind highlighting that bold
20 section there.

01:17PM

21 And Doctor, if you would follow along with me: All of
22 the above complications may be associated with serious adverse
23 events such as medical intervention and/or death. There have
24 been reports of complications, including death, associated with
25 the use of vena cava filters in morbidly obese patients. The

01:17PM

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1 risk/benefit ratio of any of these complications should be
2 weighed against the inherent risk/benefit ratio for a patient
3 who is at risk of pulmonary embolism without intervention.

4 Did I read that correctly?

5 A. You did read it correctly.

01:17PM

6 Q. Doctor, that last statement about risk/benefit ratio, do
7 you agree with that statement?

8 A. That you have to measure the risk/benefit ratio --

9 Q. Yes.

10 A. -- for a device? You always have to measure the
11 risk/benefit ratio for a device.

01:18PM

12 Q. And that's something you do patient by patient every time
13 you perform one of these procedures, correct?

14 A. Absolutely, and device by device.

15 Q. And Doctor, I think one of the things that you were
16 critical about this morning of is that it does not provide
17 information about rates of complications. Is that correct?

01:18PM

18 A. Correct.

19 Q. I think you specifically said that one problem you had is
20 that the label did not provide any information about rates of
21 the Simon Nitinol filter compared to the Eclipse Filter. Is
22 that correct?

01:18PM

23 A. Correct. I mean, it basically, when it states that there
24 are known complications, it infers that this device behaves the
25 same as the previous devices.

01:18PM

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1 Q. Doctor, am I right that you have never seen an IFU, an
2 Instructions For Use, for any IVC filter that provides
3 comparative rate information between that filter and a
4 different filter?

5 A. No. But we had a history, robust history with permanent 01:19PM
6 filters and their complications and their rates of
7 complications and what to expect. So that's what, you know, we
8 needed to go back to compare this IFU to prior IFUs.

9 Q. So for any retrievable filter that you have ever used or
10 that you are aware of in the market, are you aware of any 01:19PM
11 retrievable filter that has got comparative information in it
12 about the rate of complication versus that retrievable filter
13 to a permanent filter?

14 A. No, there is not.

15 Q. And Doctor, in regard to the Simon Nitinol Filter, you 01:19PM
16 would agree that that is a permanent filter, right?

17 A. Absolutely.

18 Q. And you have never attempted to remove a Simon Nitinol
19 filter?

20 A. I haven't removed them. I have stented around them before 01:19PM
21 when they are occluded.

22 Q. Are you aware of any instances where a Simon Nitinol filter
23 had to be removed in an open surgical procedure?

24 A. I'm sure there have been.

25 Q. And the Simon Nitinol Filter was not designed to be 01:20PM

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1 retrieved, correct?

2 A. No, it was not.

3 Q. And you would agree with me that the Eclipse Filter is a
4 filter that was designed such that it could be retrieved,
5 right?

01:20PM

6 A. Yes. Absolutely. That's one of its design
7 characteristics.

8 Q. Would you please pull up Exhibit 7156, please.

9 And Doctor you have in front of you medical article,
10 correct?

01:20PM

11 A. It's a Ferris article.

12 Q. You are familiar with this article, right?

13 A. Yes.

14 Q. And this particular article was published in the
15 peer-reviewed medical literature, correct?

01:20PM

16 A. In 1992, yes.

17 Q. And it was published in a journal called the Journal of
18 Vascular and Interventional Radiology, right?

19 A. Yeah.

20 Q. And that is the journal that is the journal that publishes
21 for the Society of Interventional Radiologists, right?

01:20PM

22 A. It does, yes.

23 Q. So you would agree with me that articles that are published
24 in this particular journal are reliable articles. Correct?

25 A. Right. Yes.

01:21PM

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1 MR. ROGERS: And if you would, Scott, let's roll over
2 to Page 405.

3 BY MR. ROGERS:

4 Q. Doctor, I realize that's a little grainy, and I apologize
5 for that. Do you see the section there that's referring to
6 Figure 5?

01:21PM

7 A. Yeah, I do.

8 Q. And if you would again follow along with me.

9 Let me back up. I apologize. Can you go back to the
10 first page?

01:21PM

11 And Doctor, do you agree that this particular article
12 was a study regarding the performance of the Simon Nitinol
13 Filter?

14 A. Yeah. 20 patients, yes.

15 Q. And where there were originally -- yeah. That's right.

01:21PM

16 So in this particular study Simon Nitinol filters were
17 implanted and they were followed and the doctors were analyzing
18 how they performed, correct?

19 A. Yeah.

20 Q. So let's go back over to 405, Figure 5. And I realize that
21 those images are not particularly easy to see. But I would ask
22 that you follow along with me with that last sentence. And it
23 reads: Chest radiograph obtained at one month reveals the
24 filter in the left pulmonary artery.

01:22PM

25 Do you see that?

01:22PM

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1 A. Yep.

2 Q. Doctor, would you agree with me that this is a report of a
3 migration of an entire Simon Nitinol Filter, not a fragment, to
4 the left pulmonary artery?

5 A. Yes, it is.

01:22PM

6 Q. Doctor, I believe you testified on direct that you charge
7 \$500 an hour as an expert witness. Is that right?

8 A. Yes. Uh-huh.

9 Q. And there's some variability in that, correct, in what you
10 charge?

01:22PM

11 A. \$6,000 a day for trial, and \$750 for a deposition because I
12 have to be out of my office.

13 Q. I understand. And so for your testimony today, you are
14 charging \$6,000?

15 A. I am.

01:23PM

16 Q. And did you charge for any time yesterday?

17 A. Yes. I was here yesterday.

18 Q. And was that another \$6,000?

19 A. Yes. It was a full day, yes.

20 Q. And so were you just charged \$6,000 for yesterday and today
21 for this case?

01:23PM

22 A. Yeah.

23 Q. And you don't plan on charging any time tomorrow, is that
24 correct?

25 A. I hope not.

01:23PM

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1 Q. Okay. Doctor, those are all the questions I have for you.

2 Thank you.

3 THE COURT: Redirect?

4 MR. COMBS: Yes, Your Honor. Could we approach
5 briefly?

01:23PM

6 THE COURT: Yes.

7 You can stand up, Ladies and Gentlemen, if you would
8 like to.

9 (Discussion was had at sidebar out of the hearing of
10 the jury:)

01:23PM

11 MR. O'CONNOR: Your Honor, just now, when they were
12 cross-examining Dr. Hurst they talked about the Eclipse IFU.
13 And they made it a big point to talk about how it covers all
14 these complications. And one thing that they really emphasized
15 was the reports of death associated with filters in morbidly
16 obese patients. Now, they know that refers to the Recovery and
17 no other filters across the board. That was unique to the
18 Recovery.

01:24PM

19 So I think they have opened the door, once again, to
20 we should be able to ask this doctor is he aware of Recovery
21 deaths with the morbidly obese population and any other filters
22 that cause that.

01:24PM

23 THE COURT: So what is it that you are asking?

24 MR. O'CONNOR: To clarify with this doctor this
25 statement about morbidly obese. There's no other filter that

01:24PM

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1 did this with morbidly obese patients other than the Recovery,
2 and they know that.

3 MR. ROGERS: Your Honor, I completely disagree. The
4 portion of the warning I showed, the sentence was obviously
5 contained in there. There was no way for me to talk about the
6 risk/benefit portion without -- I didn't want to exclude that
7 sentence when I was drawing attention to that section. I don't
8 see how the reference to the IFU has done anything to open the
9 door to the Recovery Filter deaths.

01:24PM

10 MR. O'CONNOR: You read it into the record.

01:25PM

11 THE COURT: I'm aware of that.

12 Help me understand, Mr. O'Connor, how you think this
13 opened the door to your being able to introduce evidence of
14 cephalad migration deaths which admittedly don't occur after
15 the recovery.

01:25PM

16 MR. O'CONNOR: Because if you will recall in the last
17 trial, it was happening in morbidly obese patients with the
18 Recovery. They made it a point to imply to this jury that
19 that's a known complication in the world of filters. The only
20 filter that was doing that, the only one Bard was aware of when
21 it made that IFU was the Recovery. That was a problem they had
22 primarily with the cephalad migration. In the last trial we
23 talked about the whole issue about morbidly obese patients. It
24 should be brought up with this doctor he is aware of those
25 happening by the Recovery and no other filter just by the

01:25PM

01:25PM

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1 notion that this is a problem across the board with all
2 filters.

3 THE COURT: So you are concerned that the jury has
4 been led to believe that morbidly obese patient deaths occur
5 from all filters?

01:26PM

6 MR. O'CONNOR: Right.

7 THE COURT: What is your response to that, Mr. Rogers.

8 MR. ROGERS: Your Honor, I disagree. I don't think it
9 implies that one bit. It is part of this label so I think it's
10 relevant, but I don't think it brings in the Recovery Filter
11 one bit. It is the warning for the Eclipse Filter. Nothing
12 about it says Recovery Filter. Nothing about that says
13 cephalad migration deaths. It's just a simple statement that
14 it has been reported in morbidly obese patients.

01:26PM

15 THE COURT: Okay. Hold on just a minute.

01:26PM

16 It seems to me -- let me say what my thought is and
17 let you respond.

18 What the jury's been told is that a risk of filters
19 migrating and causing death exists in morbidly obese patients.
20 You wanted in the trial to get in evidence that filters can
21 cause death to counter the defense argument that filters saves
22 lives.

01:27PM

23 This clearly doesn't. I mean, their own warning says
24 it can cause death. So it seems to me it accomplishes that
25 objective for you. And what you want to do is make the

01:27PM

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1 additional point in your favor that the only filter that causes
2 death in morbidly obese patients is a Bard filter, right? And
3 you want to take it a step further in your favor.

4 MR. O'CONNOR: I believe that's correct because we had
5 the evidence that it was -- that was the problem with the 01:27PM
6 Recovery with Bard and that was their concern, was morbidly
7 obese population. There was no other evidence that any other
8 filter has done that to any other patient. And so it's
9 misleading the jury right now to suggest otherwise.

10 THE COURT: Well, that's what I'm wrestling with is 01:28PM
11 the misleading point. The jury has been told that a risk from
12 filters is death in morbidly obese patients. They understand
13 that. They understand Bard has effectively admitted that in
14 its own warning.

15 So that fact, the possibility of death, is in front of 01:28PM
16 the jury. Bard -- I'm struggling with how the jury is being
17 misled.

18 MR. O'CONNOR: Because the jury -- they are trying to
19 imply they are just like all the other filters, and they know
20 they are not. They know that when they talk about -- and they 01:28PM
21 want to fight our contention about increased failure rates.
22 And they have kept out this so far that the only one they are
23 aware of that increased the risk of death and the fact happened
24 to be with the morbidly obese population with Recovery filters.
25 There was no other filter. Right now, their defense is we are 01:29PM

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1 just like all the rest, and they are not.

2 THE COURT: I understand that point.

3 Do you agree, Mr. Rogers, that death in morbidly obese
4 patients was unique to Bard filters?

5 MR. ROGERS: I don't agree to that, Your Honor. I
6 mean, it certainly -- there were certainly reports of that
7 occurring with the Recovery Filter in morbidly obese patients.

01:29PM

8 THE COURT: Are you aware of reports of that occurring
9 in other filter cases?

10 MR. NORTH: I have a vague recollection. That could
11 be wrong. I certainly could find out in a few minutes' time.

01:29PM

12 THE COURT: So the question is whether this is
13 misleading. That turns on whether or not you are right, this
14 is the only instance where morbidly obese deaths occur. I
15 don't know how to resolve that. I will give you an opportunity
16 to resolve it. Do you have other witnesses?

01:29PM

17 MR. O'CONNOR: No.

18 THE COURT: I'm assuming you could if I decide that's
19 relevant with a Bard witness like Mr. Carr or one of the
20 others, bring out the fact that Bard filters were known to
21 cause deaths in morbidly obese patients. Do you disagree with
22 that? I know you want to do it now.

01:30PM

23 MR. O'CONNOR: No. No. No. I think you are correct.
24 But you know, whether they go out and find the outlier out
25 there, it's still not going to resolve the problem. This is in

01:30PM

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1 there because they knew about the Recovery risk.

2 THE COURT: I can't find that the door has been opened
3 now. I want to have you come forward with whatever evidence
4 there is that this is not a unique Bard problem. And then I
5 will address your point, Mr. O'Connor, that the jury has been
6 misled. You can do it through another witness.

01:30PM

7 MR. O'CONNOR: Fair enough.

8 (In open court.)

9 THE COURT: Thank you, Ladies and Gentlemen.

10 MR. COMBS: May I proceed, Your Honor?

01:30PM

11 THE COURT: Yes.

12 MR. COMBS: I will be brief because Dr. Hurst has a
13 flight to catch. At least as brief as I can.

14 REDIRECT EXAMINATION

15 BY MR. COMBS:

01:31PM

16 Q. Dr. Hurst, you were provided a lot of Doris Jones' medical
17 records to review for your work in this case?

18 A. Correct.

19 Q. And I think you have already testified you are not an
20 expert who is shy about asking for more records or going and
21 getting additional records if you need them to complete your
22 reports and opinions?

01:31PM

23 A. Yes.

24 Q. Was there any other medical records that you wanted but
25 weren't able to access to compile your opinions in this case?

01:31PM

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1 A. No.

2 Q. Does Doris Jones have health complications that are
3 unrelated to the IVC filter?

4 A. Absolutely. She has many illnesses.

5 Q. And how does she fit in with the general population of
6 people that you implant IVC filters in?

01:31PM

7 A. Many of the people who get IVC filters already have
8 multiple illnesses. That's one of the reasons they are getting
9 a filter is because they have DVT and they have a
10 contraindication to anticoagulation. Most of the time that
11 contraindication is related to some other illness.

01:32PM

12 Q. Doris Jones' health history isn't abnormal for a recipient
13 of an IVC filter?

14 A. Absolutely not.

15 MR. COMBS: Would you pull up 4406.

01:32PM

16 I believe this is already any evidence, Your Honor.

17 THE COURT: Yes.

18 MR. COMBS: May I publish?

19 THE COURT: You may.

20 MR. COMBS: Actually, let's go to the second page
21 please.

01:32PM

22 BY MR. COMBS:

23 Q. You might have to help me, Dr. Hurst. You were trying to
24 read from a medical record earlier on cross, and I'd like you
25 to be able to complete what you were starting to look at. But

01:33PM

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1 is this -- maybe we need to go back to the first page or maybe
2 you can help me find in this record where that -- where you
3 were reading from.

4 A. This is -- you need the history and physical from the ER.
5 Isn't that what you are looking for? This is the report of the
6 IVC filter removal. It's the wrong -- the one I was reading
7 from was the history and physical from her date of presentation
8 to the emergency department done by the ER physician.

01:33PM

9 Q. Well, what do you recall from what you were trying to read
10 about Doris Jones' health history in April of 2015?

01:33PM

11 A. So basically, the history and physical that was done by the
12 emergency room physician described her ailments that she had
13 that brought her to the ER. And one of them was this dizziness
14 and -- no, that's not it. That's the discharge summary.

15 The thing that really brought her -- one of the things
16 that brought her in also was some shoulder and arm pain,
17 started out on the left side and then went to the right side.
18 The pulmonary arteries are not innervated per se with pain
19 receptors, and neither is the mediastinum or the chest. That's
20 why you get what's called referred pain. There are nerves
21 that --

01:34PM

22 MR. ROGERS: I'm sorry to interrupt, but this has not
23 been covered in his report.

24 THE COURT: Overruled. I think this is fair redirect
25 based on what was covered in cross.

01:34PM

01:34PM

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1 THE WITNESS: So the nerves in the chest are --
2 sensory fibers actually transfer that feeling of pain to the
3 sensory fibers that go out to your arms, your shoulder, the
4 upper portion of your neck and chest. That's why when you have
5 a heart attack you get left-sided chest pain and pain up into
6 your neck. 01:35PM

7 The pulmonary arteries are very similar. They are
8 innervated by the vagus nerve. And the distribution pain for
9 referred pain to the vagus nerve is the shoulder and upper
10 arms. So it wouldn't be unusual for someone with a problem in
11 their pulmonary artery, like when we used to do pulmonary
12 artery angioplasty, the patients would get tremendous pain in
13 their shoulders from inflating the balloon. 01:35PM

14 So it's not unusual to have pain related to the
15 pulmonary arteries referred to the shoulders and arm. 01:35PM

16 BY MR. COMBS:

17 Q. Dr. Hurst, you were asked a series of questions about other
18 IVC filters and a whole bunch of different brand names were
19 thrown out.

20 A. Sure. 01:35PM

21 Q. Are any of the other IVC filters you are familiar with, do
22 any of them have the problems of the Bard G2 Eclipse line of
23 filters?

24 A. The Gunther Tulip has problems with penetration, with
25 fractures, and with fragments that can migrate, again, because 01:36PM

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1 of its design. The feet of these filters were made to release
2 from the inferior vena cava once that radial force of the
3 filter was disrupted. When the fracture happens in the filter,
4 it disrupts that radial force and then the foot just can pull
5 right out of the inferior vena cava wall.

01:36PM

6 Q. Let me ask it a little different way. What's unique about
7 the problems with failures in the Bard Eclipse G2 line of
8 filters?

9 A. Well, the unique thing is that the Bard filter is the only
10 one that has these free arms that we showed previously. That
11 upper tier of arms is actually really only attached in one
12 place, and that's it, the cone in the filter. And if that
13 detachment, if it detaches from the cone then it's free.

01:36PM

14 Q. You were asked about the Denali Filter that you use from
15 time to time. Could you explain to the jury what your current
16 practice is with using the Denali Filter?

01:37PM

17 A. So we use the Denali Filter only as a retrievable filter or
18 a temporary device. So if a patient has an issue where they
19 can't receive anticoagulation but has a DVT and needs
20 protection from a PE, but we feel like that issue may pass
21 we'll put in a retrievable filter. And then what we do is we
22 see those patients in follow-up usually within one month and
23 determine whether or not they are going to still need a filter.

01:37PM

24 If they are still going to need a filter we'll
25 actually follow them out to about three months, and at that

01:37PM

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1 point, if we feel like they are going to need a permanent
2 filter we'll retrieve the temporary filter, the Denali Filter,
3 and we'll put in a permanent filter.

4 Q. Did Bard ever tell interventional radiologists such as
5 yourself that the G2 Eclipse line of filters needed to be
6 followed or monitored after implantation?

01:38PM

7 A. So the recommendations that were given in the IFU, you saw
8 them. They actually did make some recommendations. What they
9 told you to do was refer to the SIR recommendations and they
10 referred also to two additional papers which he didn't cover.

01:38PM

11 All three of those articles made recommendations for
12 clinical follow-up of the filter, and they left it up to the
13 physician to do the follow-up.

14 In the original trial for the Recovery Filter, the
15 person who did the study, his name was Murray Asch, after doing
16 the study and in his deposition both, he recommended that there
17 be imaging follow-up for these filters because he felt that
18 there was -- that because of his study that he did, the
19 original study for these retrievable filters, that there might
20 be some instability with these devices and that they should be
21 followed with imaging.

01:38PM

01:39PM

22 That recommendation was never put into the IFU, and it
23 was sort of left up in the air.

24 Q. In fact, the IFU specifically describes, we just saw it
25 blown up a minute ago, that the Eclipse was intended for use as

01:39PM

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1 a permanent device. Correct?

2 A. Correct.

3 Q. And in the Eclipse IFU, we saw precaution sections for
4 placement. Do you remember that?

5 A. Yes.

01:39PM

6 Q. And a precaution section for removal. Do you remember
7 that?

8 A. Yes.

9 Q. Is there anything in the Eclipse IFU, is there a section
10 for precautions for leaving it in the body?

01:39PM

11 A. No. Not -- no.

12 Q. Do you have opinions about the monitoring and follow-up
13 that Doris Jones should receive because of the filter fragment
14 piece in her?

15 MR. ROGERS: Your Honor, objection. This is beyond
16 the scope of the cross or the prior direct.

01:40PM

17 THE COURT: I think that is beyond the scope. I'm
18 going to sustain the objection.

19 BY MR. COMBS:

20 Q. You were asked a lot of questions about the 2012 and 2013
21 hospital visits. And have you reviewed imaging for those
22 visits?

01:40PM

23 A. Yes.

24 Q. And the problems with the filters show up in the imaging
25 for those visits?

01:40PM

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1 MR. ROGERS: Your Honor, objection. This is beyond
2 the scope of the direct or the cross.

3 THE COURT: Overruled.

4 THE WITNESS: Can you repeat your question?

5 BY MR. COMBS:

01:40PM

6 Q. In the 2012 and 2013 imaging of chest X-ray films, I
7 believe, what did those show for Doris Jones' Eclipse Filter?

8 A. The 2000 films didn't show a whole lot. The filter was in
9 good position. You can only really see the top of the filter

01:41PM

10 because it was a chest X-ray. The 2013, she had what's called
11 a rib series because she was having this costochondritis rib

12 thing again. And that includes a picture of her abdomen in
13 which you can see the filter. And in that picture you can see

14 that the filter is tilted just about 8 to 10 degrees and has
15 caudally migrated about a centimeter. So it's changed

01:41PM

16 position.

17 Q. I want to pull up the Trerotola article. I don't know the
18 best way to do that. It's a defense exhibit, I think.

19 MR. ROGERS: Exhibit 8602.

20 MR. COMBS: And if you could go to the, I believe it's
21 the second to last page.

01:42PM

22 MR. ROGERS: Your Honor, I apologize for interrupting,
23 but this exhibit was not admitted into evidence. Just certain

24 portions of it were published and it should not be published to
25 the jury.

01:42PM

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1 THE COURT: I agree it's not admitted. It can be used
2 under 803.18.

3 MR. COMBS: I'm not trying to publish it, Your Honor.
4 I wanted to ask some follow-up on it.

5 THE COURT: That's fine.

01:43PM

6 BY MR. COMBS:

7 Q. Second to last page. There we go.

8 And do you see down there where it says in the middle
9 of the bottom: Disclosures of conflict of interest?

10 A. Yes, I do. Yes.

01:43PM

11 Q. And it talks about -- you don't have to read it into the
12 record. I don't think -- that might not be appropriate anyway.
13 But reading it there, what does that say to you reading that
14 disclosures of conflicts of interest?

15 MR. ROGERS: Objection, Your Honor. This is hearsay.

01:43PM

16 THE COURT: Overruled. He's not asking him to repeat
17 what has been said. He's asking for your impression, Doctor.

18 THE WITNESS: So when you do a journal article or you
19 write a -- do a study, you have to disclose as a matter of
20 course any conflicts of interest that you might have, anything
21 that might bias you when you are doing the study. So in this
22 particular article, SOT on your screen there is Scott
23 Trerotola. And it basically says he is a paid consultant and
24 he receives honoraria from Bard Peripheral Vascular. So does
25 SWS. So --

01:44PM

01:44PM

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1 BY MR. COMBS:

2 Q. That's the other author of this?

3 A. Yeah. So basically what that means is they have disclosed
4 that they are both receiving funds from Bard.

5 Q. And just generally, I don't want to go through the article,
6 but just generally, does this article support your opinion that
7 there is little information on embolized filter fragments in
8 the medical literature?

01:44PM

9 A. Exactly. I mean, in this particular article, you know,
10 there are only six fragments with were evaluated in the
11 pulmonary artery. That's six fragments out of however many
12 fragments are out there. And they only -- they don't really
13 describe their follow-up. They give a range of years of
14 follow-up from two months to eight and-a-half years with an
15 average of three and-a-half years. And the imaging that they
16 use to follow it, they don't describe completely but I think
17 they were using chest X-rays which is a very imprecise way to
18 measure movement of a fragment that's only 1.4 centimeters in
19 length and only a couple million in diameter.

01:45PM

01:45PM

20 So while it's a good start, it certainly is not the
21 complete and last word on what pulmonary artery fragments are
22 going to do. I just don't think we know.

01:45PM

23 Q. Basically this article is just a summary of these doctors'
24 work removing filter fragments. Is that a fair summary of
25 this?

01:46PM

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1 A. Exactly.

2 Q. How many of the filter fragments discussed in this article
3 were from Bard IVC filters?

4 A. 50 percent of the fractured filters, or fragments, were
5 from Bard devices.

01:46PM

6 Q. And you were asked some questions, I think, based on this
7 article about whether fragments that embolized to the pulmonary
8 artery are symptomatic or asymptomatic. Do you recall that?

9 A. Yeah.

10 Q. And I think there's an implication in this litigation that
11 asymptomatic filter fragments aren't a problem. Is that right
12 in that asymptomatic filter fragments aren't a problem, or is
13 there a problem even if there's no current symptoms?

01:46PM

14 A. I mean, when you talk about filter fragments you have to
15 talk about all the fragments not just the ones in the pulmonary
16 arteries. And we know that these fragments can migrate. So
17 they may be asymptomatic one year and the next year they have
18 moved to a location that's more critical.

01:46PM

19 So we have seen fragments that have migrated through
20 the IVC, through the tissues of the retroperitoneum into the
21 ureter or the kidney. We have seen fragments migrate to where
22 they are touching bone and the patient is having back pain.

01:47PM

23 So they may start out asymptomatic, and they may
24 remain asymptomatic, but they also can become symptomatic.

25 Q. They are asymptomatic until they are not, right?

01:47PM

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1 A. Exactly.

2 Q. You were shown an article about the Simon Nitinol Filter.
3 I didn't know if you had any other comments on that but I
4 wanted to make sure you had an opportunity if you had any
5 further comments on that article to tell the jury.

01:47PM

6 A. I don't think I did. No.

7 Q. And then you were asked about some of your deposition
8 testimony about 1 percent rates and 1 percent chance of harm
9 and things like that. When you testified about that 1 percent
10 chance of something happening when? Over the next week? The
11 next month? In Doris Jones' lifetime? What temporal -- what
12 time frame did you have in mind when you talked about 1 percent
13 chance of something bad happening?

01:48PM

14 A. I think I was talking about 1 percent per year.

15 MR. COMBS: Nothing further, Your Honor.

01:48PM

16 THE COURT: Thank you, Doctor. You can step down.

17 MR. COMBS: Dr. Hurst. Sorry, Your Honor, if I may
18 one more question. Definitely one.

19 BY MR. COMBS:

20 Q. Are all the opinions you just gave on redirect as well as
21 your opinions on direct examination to a reasonable degree of
22 medical probability?

01:48PM

23 A. Yes.

24 MR. COMBS: Thank you.

25 THE COURT: All right. Thank you.

01:48PM

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1 MR. LOPEZ: Your Honor, before we call our next
2 witness, can we deal with the deposition of Dr. Altonaga, the
3 one section the court reporter read?

4 THE COURT: Yes. Before you came in this morning,
5 Ladies and Gentlemen, we discussed the fact that there was a 01:49PM
6 question and answer in the video of Dr. Altonaga yesterday that
7 you couldn't really hear. You couldn't hear the question. You
8 could hear the answer. It was being read back by the court
9 reporter.

10 So I decided we should re-read to you that question 01:49PM
11 and answer from his deposition. By doing that we're not
12 intending to emphasize this testimony over any other. We just
13 want to make sure it was heard.

14 MR. LOPEZ: The question was: Would it be your
15 expectation that when Bard launches a filter for commercial use 01:49PM
16 that Bard would have an awareness about the long term clinical
17 performance of that device?

18 And the answer was yes.

19 THE COURT: Okay. Thanks.

20 All right. Your next witness. 01:49PM

21 MR. CLARK: Your Honor, the plaintiff would call Dr.
22 Anthony Avino via video deposition and at this time would move
23 into evidence Exhibits 1133, 4401, 4402.

24 THE COURT: Any objection to those exhibits?

25 MS. HELM: None, Your Honor. 01:50PM

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1 THE COURT: All right. Those are admitted.

2 MR. CLARK: And, Your Honor, there are a couple of
3 other deposition exhibits that are already in evidence, so I
4 have prepared a cheat sheet for the jury if that would be
5 appropriate.

01:50PM

6 THE COURT: Yes. That's fine.

7 MR. CLARK: May I approach?

8 THE COURT: Yes. Give it to Traci and she'll handle
9 that.

10 MR. CLARK: May I be permitted to read the summary?

01:51PM

11 THE COURT: You may.

12 MR. CLARK: Dr. Anthony Avino is a board certified
13 surgeon in Savannah, Georgia. He has been practicing since
14 1999.

15 (Video deposition testimony played in open court.)

01:51PM

16 THE COURT: Counsel, let's stop at this point, please.
17 Ladies and Gentlemen, we will break until 2:45 and
18 excuse the jury at this time.

19 (Recess from 2:29 p.m. until 2:46 p.m.)

20 THE COURT: Ladies and gentlemen, for your
21 information, we'll go until 4:20 today. We have some hearings
22 at 4:30. We'll have to break.

02:46PM

23 You can continue with the deposition.

24 (Video deposition testimony resumed.)

25 MR. O'CONNOR: Your Honor, we call at this time

02:46PM

~~5-22-18-MD 15-2641-Jones v Bard-Jury Trial-Day 5-Matthews-Direct~~

1 Shanice Matthews.

2 THE COURTROOM DEPUTY: Ms. Matthews, if you would
3 please come forward. Stand right here and raise your right
4 hand, please.

5 (The witness was sworn.)

02:52PM

6 THE COURTROOM DEPUTY: Could you please spell your
7 first and last name for the record.

8 THE WITNESS: Shanice, S-H-A-N-I-C-E, Matthews,
9 M-A-T-T-H-E-W-S.

10 THE COURTROOM DEPUTY: Thank you so much. Please come
11 have a seat.

02:53PM

12 MR. O'CONNOR: May I proceed, Your Honor?

13 THE COURT: Yes.

14 SHANICE MATTHEWS,
15 called as a witness herein, having been duly sworn, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. O'CONNOR:

19 Q. Would you introduce yourself to the jury, please?

20 A. Hi. My name is Shanice Matthews.

02:53PM

21 Q. How do you feel today, Shanice?

22 A. A little nervous but good.

23 Q. Are you one of the daughters of Doris Jones?

24 A. I'm her youngest daughter.

25 Q. Do you have a sister?

02:53PM

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1 A. Yes, sir.

2 Q. What is her name?

3 A. Sharese May.

4 Q. And where are you from?

5 A. I'm from Savannah, Georgia.

02:53PM

6 Q. Did you come here from Savannah to be in this trial?

7 A. Yes, sir.

8 Q. Now, tell us a little bit about yourself. How old are you?

9 A. I am 26 years old.

10 Q. And do you have any children?

02:54PM

11 A. I have two daughters.

12 Q. And what are their names and ages?

13 A. Chastity Matthews. She's seven. She's my oldest. And

14 Zi'Yari Matthews. She's three. She's my youngest.

15 Q. Are you married?

02:54PM

16 A. Yes, sir.

17 Q. What is your husband's name?

18 A. His name is DeAndre Matthews.

19 Q. Back in Savannah, Georgia, do you work?

20 A. Yes, sir.

02:54PM

21 Q. Would you tell us what you do?

22 A. I am a housekeeper at Springhill Suites.

23 Q. How many hours a week do you work?

24 A. Between eight and nine.

25 Q. And do you go to school?

02:54PM

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1 A. Yes, sir, I do.

2 Q. Where are you going to school at?

3 A. I go to Savannah Technical College.

4 Q. Would you tell the members of the jury what you are doing
5 in school right now?

02:54PM

6 A. I'm receiving my GED.

7 Q. So did your mother raise you and your sister?

8 A. Yes, sir.

9 Q. Tell us about your mother and your relationship with her,
10 Doris Jones.

02:54PM

11 A. Well, my mom, she was a single mother, and she raised me
12 and my sister to have a good life. In school she made sure we
13 got to school every day safely, eat, you know.

14 Q. How did she make sure you got to school safely every day?

15 A. She walked us to school every day.

02:55PM

16 Q. Elementary school?

17 A. Yes, sir.

18 Q. Did she used to come and take you back?

19 A. Yes, sir.

20 Q. Now, when you go to work and school every day who takes
21 care of your children?

02:55PM

22 A. My mother.

23 Q. Does she do that every day for you?

24 A. Yes, sir.

25 Q. How do you feel about that?

02:55PM

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1 A. I feel like they are in safe hands.

2 Q. Does that help you out?

3 A. A lot. Yes, sir.

4 Q. How so?

5 A. Because I don't trust any daycares, and my mom is the best
6 person I know to take care of my kids. She took care of me.

02:55PM

7 Q. I'm sorry. I interrupted you. I apologize.

8 A. She took care of me and my sister to the best knowledge she
9 could, and I believe she could do the same with my girls.

10 Q. Does that give you peace of mind when you go to work and
11 school every day?

02:56PM

12 A. Yes, sir.

13 Q. Now, Shanice, are you aware that your mom received an IVC
14 filter in August of 2010?

15 A. Yes, sir.

02:56PM

16 Q. And then in April of 2015, are you aware that your mother
17 had problems with the filter?

18 A. Yes, sir.

19 Q. Would you tell the members of the jury how you became aware
20 of what problems your mom had with her filter. What happened?
21 What do you know?

02:56PM

22 A. Well, from what I know she went to the hospital because she
23 wasn't feeling well, and --

24 Q. And then did she -- did you learn at some point in time
25 that something happened to her filter?

02:56PM

~~5-22-18-MD 15-2641-Jones v Bard-Jury Trial-Day 5-Matthews-Direct~~

1 A. Yes, sir.

2 Q. What did you learn?

3 A. That it broke off and embedded into her lung.

4 Q. And did you -- were you aware the main part of the filter
5 was removed?

02:57PM

6 A. Yes, sir.

7 Q. Now, that was in 2015, correct?

8 A. Yes, sir.

9 Q. Does your mom continue to take care of your two little
10 girls?

02:57PM

11 A. Yes, sir.

12 Q. And your sister, does she have a child?

13 A. Yes, sir. She has a one-year-old daughter.

14 Q. So what's Sharese's daughter's name?

15 A. Monae Jones.

02:57PM

16 Q. Does your mother take care of Monae?

17 A. Yes, sir.

18 Q. And does she do that every day?

19 A. Yes, sir.

20 Q. Tell us, if you would, from your perspective, knowing your
21 mom, Doris, how having that piece of that filter embedded in
22 her lung, how does she deal with that?

02:57PM

23 MS. HELM: Your Honor, object. Calls for either
24 hearsay or speculation or both.

25 THE COURT: I think you need to call for observations

02:57PM

~~5-22-18-MD 15-2641-Jones v Bard-Jury Trial-Day 5-Matthews-Direct~~

1 in your questioning, Mr. O'Connor.

2 BY MR. O'CONNOR:

3 Q. You see your mom every day, is that right?

4 A. Yes, sir.

5 Q. And you know that she has an embedded filter in her lung?

02:57PM

6 A. Yes, sir.

7 Q. Have you observed how she deals with that?

8 A. It scares her.

9 Q. Does she talk about it?

10 A. No, sir. But I can see in her eyes that it scares -- it
11 hurts her.

02:58PM

12 Q. But she never talks about it?

13 A. No, sir.

14 Q. Why is that?

15 A. Because she wants to be strong for me, my sister, and her
16 granddaughters. So she doesn't like us to see her fear.

02:58PM

17 Q. Does she stay strong despite it all?

18 A. Yes, as to her best she can.

19 Q. All right. Thanks. That as all I have.

20 THE COURT: Any cross-examination?

02:58PM

21 MS. HELM: None, Your Honor.

22 THE COURT: Thanks, Ms. Matthews.

23 THE WITNESS: Thanks so much.

24 MR. STOLLER: Your Honor, plaintiff calls Alex

25 Tessmer.

02:59PM

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1 THE COURT: If you want to stand up, Ladies and
2 Gentlemen, while the witness is coming up, feel free.

3 THE COURTROOM DEPUTY: Sir, if you will please come
4 forward. If you will raise your right hand, please.

5 (The witness was sworn.)

02:59PM

6 THE COURTROOM DEPUTY: Please state your name and
7 spell it for the record.

8 THE WITNESS: Alex Tessmer. A-L-E-X, T-E-S-S-M-E-R.

9 THE COURTROOM DEPUTY: Thank you. Please come have a
10 seat.

02:59PM

11 ALEX TESSMER,
12 called as a witness herein, having been duly sworn, was
13 examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. STOLLER:

16 Q. Good afternoon, Mr. Tessmer.

17 A. Good afternoon.

18 Q. My name is Paul Stoller. We haven't met before. How are
19 you doing this afternoon?

20 A. I'm doing well. How are you?

03:00PM

21 Q. Good. Thank you.

22 I understand that you work for Bard, is that correct?

23 A. Yes.

24 Q. Currently you are in a marketing position at Bard?

25 A. That is correct.

03:00PM

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1 Q. But back in about 2002 to around 2005, you were a member of
2 the filter franchise team. Correct?

3 A. That is correct.

4 Q. You were -- you held the position as an engineer?

5 A. That is correct.

03:00PM

6 Q. And you worked on IVC filters, among other things?

7 A. So my specific role was to work on the jugular delivery
8 system. And I was pulled from time to time to help out with
9 different aspects of the filter. But that was not my

10 expertise, the filter itself.

03:00PM

11 Q. Let me -- I will try to be clear and I will try to ask
12 clear questions. If you don't understand, let me know. But my
13 question, I think, sir, was: You worked on IVC filters among
14 other things. Is that true?

15 A. I worked on the jugular delivery system.

03:01PM

16 Q. As part of the IVC filter franchise team?

17 A. I was part of the filter franchise team, and they pulled me
18 in to do testing and so forth once in a while on the filter
19 itself.

20 Q. Sir, I will ask you questions. But is the answer to my
21 question correct, you were part of the filter franchise team?

03:01PM

22 A. Yes.

23 Q. And you worked on IVC filters. Thank you.

24 And you just mentioned that you worked on some testing
25 at some points in time, is that correct?

03:01PM

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1 A. That is correct.

2 Q. I'm going to ask you, you were part, in December of 2003,
3 of a special design review for the Recovery Filter, correct?

4 A. That is correct.

5 MR. STOLLER: Can we pull up, Gay, Exhibit 1006,
6 please?

03:01PM

7 Your Honor, I believe this is in evidence. May I show
8 it to the jury?

9 THE COURT: Yes, you may.

10 MR. STOLLER: Thank you.

03:01PM

11 BY MR. STOLLER:

12 Q. Mr. Tessmer, you should have on the screen what's Exhibit
13 1006 to this trial, which is an e-mail on the top to, among
14 others, you, dated December 10, 2003. Do you see that?

15 A. Yes, I do.

03:02PM

16 Q. And the subject line is Special Design Review for Recovery
17 Meeting Minutes, correct?

18 A. Correct.

19 Q. And if we go to the next page, we have a memorandum that
20 appears to be those meeting minutes. Correct?

03:02PM

21 A. Correct.

22 Q. And you have seen this document before, haven't you, sir?

23 A. I have seen it.

24 Q. And the e-mail -- or sorry -- the memorandum is addressed
25 to you among others, correct?

03:02PM

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1 A. That is correct.

2 Q. And if we look at the first paragraph just underneath the
3 subject line, it says: A special design review meeting was
4 held on Friday, December 5th, 2003, to discuss the Recovery
5 Filter and Cone projects. It has some numbers in the
6 parenthesis. The purpose of this special review was to gain
7 further understanding related to the design elements of these
8 products in anticipation of the up-and-coming full market
9 release in January of 2004. Correct?

03:02PM

10 A. That is what it says, correct.

03:03PM

11 Q. And you were at that meeting, correct?

12 A. Yes, as far as I -- according to this document.

13 Recollection is a little fuzzy. It's been over a decade. But
14 according to this, yes, I was at that meeting.

15 Q. And the subject matter discussed at that meeting was to
16 gain a further understanding related to design elements of the
17 Recovery Filter, correct?

03:03PM

18 A. Design elements of these products in anticipation of
19 up-and-coming FMR, correct.

20 Q. And the products included the Recovery Filter, correct?

03:03PM

21 A. Yes.

22 Q. If we go down a couple of paragraphs it says: The
23 following items resulted from this meeting. Do you see that?

24 A. Yes, I do.

25 Q. And the first of those talks about deployment force in

03:03PM

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1 bold. Do you see that?

2 A. Yes.

3 Q. Second, partial deployment in bold?

4 A. Yes.

5 Q. And the third related to the issue of migration. Do you
6 see that?

03:04PM

7 A. Yes.

8 Q. Like to focus, if we can, sir, on the third point which
9 says: Related to the issue of migration, the review team would
10 like to see objective evidence of the following elements.

03:04PM

11 Do you see that?

12 A. Yes.

13 Q. And the first one under A says: Documentation that
14 explains the establishment of the 50 millimeters mmHd, which is
15 millimeters mercury, correct?

03:04PM

16 A. Correct.

17 Q. So it says: Documentation that explains the establishment
18 of the 50 millimeters mercury acceptance criteria for migration
19 resistance, correct?

20 A. Yes.

03:04PM

21 Q. And that was one of the items that the Design Review
22 Committee wanted to see, correct?

23 A. Yes.

24 Q. And if we turn to the next page, 3, there are four -- I'm
25 sorry -- five more items, B through F. Do you see that?

03:04PM

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1 A. Yes, I do.

2 Q. And B says: A migration resistance study that analyzes the
3 performance of the Recovery Filter in conjunction with tilting
4 and quantity of legs and hooks. True?

5 A. True.

03:05PM

6 Q. And the next one says: C, a migration resistance study
7 that compares the Recovery Filter to competitive products, then
8 in parenthesis, e.g. Greenfield.

9 Did I read that correctly?

10 A. Yes.

03:05PM

11 Q. Do you recall, sir, why they were asking about comparison
12 to the Greenfield Filter?

13 A. It says example given, Greenfield not exactly -- don't
14 recall exactly why. They just chose Greenfield on there.

15 Q. Sitting here today, sir, do you recall that Greenfield was
16 one of the predicate devices for the Recovery Filter?

03:05PM

17 A. Okay. So that was -- okay, for the 510(k). Okay.

18 Q. Do you recall that?

19 A. I do not recall that.

20 Q. Do you recall the SNF, Simon Nitinol, was also the
21 predicate device for the Recovery Filter?

03:05PM

22 A. I think in my preparation for today, I think I did see
23 that.

24 Q. Okay. So at least for the Simon Nitinol you recall that
25 that's a predicate but you are not sure about the Greenfield.

03:06PM

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1 Is that correct?

2 A. That's correct.

3 Q. They ask about a couple other things. I'll skip ahead to

4 D, they ask about radial force. Do you see that?

5 A. Yes, I do see it.

03:06PM

6 Q. In E, they ask about a migration resistance study on the
7 filter that was manufactured at a certain location. Do you see
8 that?

9 A. Yes, I do.

10 Q. Finally, they ask under F, a migration resistance study
11 that analyzes the performance of the Recovery Filter in
12 conjunction with an oval and/or D shaped IVC track.

03:06PM

13 Do you see that?

14 A. Yes, I do.

15 Q. And at the time that the special Design Review Committee
16 was asking for, I believe their language on the prior page was
17 objective evidence of these items, you were approximately,
18 what, six weeks before full market release of the product?

03:06PM

19 A. It appears to be that way if you go back to the top.

20 Q. Well, you know, sir, sitting here today, that the full
21 market release wasn't until January of 2004, correct?

03:07PM

22 A. Well, I saw in the document it was anticipated --
23 anticipation of the full market release. If the full market
24 release had actually occurred, I don't recollect.

25 Q. You know this question was shortly before it was

03:07PM

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1 anticipated that full market release was going to happen,
2 correct?

3 A. I believe, yes, according to this document.

4 Q. Is your memory any different than that?

5 A. I do not.

03:07PM

6 Q. So at that time, shortly before full market release, the
7 special Design Review Committee who had been tasked to look at
8 this device before it went to market had these six plus
9 questions for which they still wanted objective evidence,
10 correct?

03:07PM

11 A. It appears from the document we are looking into these
12 questions, correct.

13 Q. And do you recall that those tests were not completed and
14 provided back to the Design Review Committee until after full
15 market release?

03:08PM

16 A. That I don't recall, or I am not aware.

17 MR. STOLLER: Let's look, Gay, if we can, at Exhibit
18 2062.

19 Your Honor, this is also in evidence. May we display
20 it to the jury?

03:08PM

21 THE COURT: Yes.

22 MR. STOLLER: Thank you.

23 BY MR. STOLLER:

24 Q. Mr. Tessmer, Exhibit 2062 is a memorandum to, it says file,
25 from Mr. Carr. Who is Mr. Carr?

03:08PM

5-22-18-MD 15-2641-Jones v Bard-Jury Trial-Day 5-Tessmer-Direct

1 A. At one point he was my boss.

2 Q. And at that point in time he was your boss, correct?

3 A. Correct. Well, just to be fair, he was my boss and then at
4 some point he appointed another boss that reported up to Rob.

5 Q. Okay.

03:08PM

6 A. But he was the director at the time, I believe.

7 Q. And Mr. Carr was the head of the filter franchise team,
8 correct?

9 A. Yes.

10 Q. Of which you were a member, correct?

03:09PM

11 A. That is correct.

12 Q. And this memo, it says in the first paragraph: This memo
13 is in response to the special design reviews conducted on
14 December 5th for projects 7018 and 8008. Do you see that?

15 A. I do.

03:09PM

16 Q. And do you recall those are the numbers associated with the
17 Recovery Filter and the Recovery Cone?

18 A. I believe those were the numbers.

19 Q. If we look down, there are numbers on the left-hand side of
20 this 1, 2, and 3. Do you see those?

03:09PM

21 A. Yes.

22 Q. And if we look all the way down to Number 3, you see it
23 says: Related to the issues of migration, the review team
24 would like to see objective evidence of the following elements,
25 correct?

03:09PM

5-22-18-MD 15-2641-Jones v Bard-Jury Trial-Day 5-Tessmer-Direct

1 A. Correct.

2 Q. Same language we just saw in the memorandum and the minutes
3 of the special design review meeting, correct?

4 A. Yes. It appears to be similar.

5 Q. And there appears to be some language in the A and the B on
6 this page that corresponds to what we just saw on those meeting
7 minutes, correct?

03:10PM

8 A. Yes.

9 Q. And if we look under A, it says: The team will investigate
10 the development of the acceptance criteria and provide what
11 information is available by February 6th, 2004. Correct?

03:10PM

12 A. That's what it says, yes.

13 Q. And so you had anticipated full market release in January
14 of 2004 and according to Mr. Carr, anticipated answering the
15 first question by February 6th. Correct?

03:10PM

16 A. That's what this says here, yes.

17 Q. And look at B at the bottom of the page, which is migration
18 resistance study. Do you see that?

19 A. Yes.

20 Q. Let's turn to the next page. I want you to keep that in
21 mind. That's Item B. And it appears that if we look for this
22 item, Mr. Carr says should be done by March 12, 2004. Correct?

03:10PM

23 A. Yes.

24 Q. And under C, that item, which was a migration resistance
25 study that compares the Recovery Filter to competitive products

03:11PM

5-22-18-MD 15-2641-Jones v Bard-Jury Trial-Day 5-Tessmer-Direct

1 again March 12, correct?

2 A. That's what it says, yes.

3 Q. D, radial force study looks to be done by March 12,
4 correct?

5 A. That is correct.

03:11PM

6 Q. E, migration resistance study on the different
7 manufacturing locations March 12, correct?

8 A. Yes.

9 Q. And then F, which is another migration resistance study
10 also March 12, correct?

03:11PM

11 A. That's correct.

12 Q. So is it your recollection, sir, that these tests were not
13 completed, in fact, until after the product went to full market
14 release?

15 A. Yeah. So I'm not aware of when full market release
16 occurred.

03:11PM

17 Q. But it was your understanding that was going to happen in
18 January of 2004, correct?

19 A. It was my understanding that that was the anticipated date
20 because that's what I recollect from the prior document.

03:12PM

21 Q. Well, let's talk about the tests that you actually
22 conducted.

23 MR. STOLLER: Gay, would you please pull up Exhibit
24 1383.

25 And, Your Honor, this is also in evidence. May we

03:12PM

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1 show it to the jury?

2 THE COURT: Yes.

3 MR. STOLLER: Thank you.

4 BY MR. STOLLER:

5 Q. Sir, this says: It is a characterization of Recovery
6 Filter migration resistance in comparison to competitive
7 product Phase 1. Do you see that?

03:12PM

8 A. Yes, I do.

9 Q. Do you recall this as the test you conducted for
10 comparative migration resistance?

03:12PM

11 A. So this is a report that I would have written. My
12 technicians actually conducted the test, but I kind of
13 supervised the technicians and wrote this report.

14 Q. Fair enough. So there were people who worked at the
15 company and within your department who were responsible to
16 physically run the tests and give the results to you?

03:12PM

17 A. That is correct.

18 Q. And then you would take those results and you put them into
19 this report?

20 A. That's correct.

03:13PM

21 Q. Let's take a look, if we could, at Page 2, please. And
22 under Item Number 1, objective and purpose of the test, it
23 says: The objective of this study was to compare the Recovery
24 Filter, RF, to competitive products in relationship to
25 migration resistance. Did I read that correctly?

03:13PM

5-22-18-MD 15-2641-Jones v Bard-Jury Trial-Day 5-Tessmer-Direct

1 A. Yes.

2 Q. So this was the migration -- comparative migration
3 resistance test that the special Design Review Committee had
4 requested in December of 2003. Correct?

5 A. Yes.

03:13PM

6 Q. And just for a moment, I would like to take you to the
7 bottom. Skip past a number of things but at the bottom of the
8 page under 4.0 it has a heading of test procedure. Do you see
9 that?

10 A. I do.

03:13PM

11 Q. And it talks about test protocol TPR-04-02-02. Do you see
12 that?

13 A. Yes.

14 Q. And that is in reference to the protocol for this
15 particular test, correct?

03:14PM

16 A. Yes.

17 Q. And a test protocol is essentially the rules that you are
18 supposed to follow in performing and conducting the test. Is
19 that fair?

20 A. That's fair.

03:14PM

21 Q. And it's important to follow those rules when you are
22 conducting the test to ensure that the test accurately measures
23 what you're trying to determine by the test. Would you agree
24 with that?

25 A. Yes.

03:14PM

5-22-18-MD 15-2641-Jones v Bard-Jury Trial-Day 5-Tessmer-Direct

1 Q. Would you agree with me that this test that you were
2 conducting, sir, was a critical test?

3 A. Yeah. I mean, this test itself was a characterization so
4 we're trying to characterize compared to the other products.

5 Q. I understand that, sir, but would you agree that the test
6 is critical in terms of answering the questions about the
7 comparative migration resistance of the Recovery Filter as
8 against other filters as requested by the Design Review
9 Committee in December of 2003?

03:14PM

10 A. Yes. That's fair.

03:14PM

11 Q. I want to go to the next page quickly to orient ourselves.
12 If we go to the bottom, under 5.3, it talks about sample
13 identification. Do you see that?

14 A. Yes, I do.

15 Q. It has sample ID numbers and gives us a description,
16 correct?

03:15PM

17 A. Correct.

18 Q. So that we know when we look at results if we see something
19 with an RF it's a Recovery Filter, is that correct?

20 A. That's correct.

03:15PM

21 Q. And SF means Simon Nitinol Filter, is that correct?

22 A. Yes.

23 Q. GT means Greenfield Titanium Filter, correct?

24 A. Yes.

25 Q. So if we have any questions about what any of these

03:15PM

5-22-18-MD 15-2641-Jones v Bard-Jury Trial-Day 5-Tessmer-Direct

1 shorthand sample ID numbers are, we can look at this table and
2 know what the answer is. Is that true?

3 A. That's true.

4 Q. Let's go ahead to the next page, bottom, Item 70. Test
5 results summary of data. Do you see that?

03:15PM

6 A. Yes, I do.

7 Q. And if we're looking here, this is a summary of the results
8 of the test. Is that fair?

9 A. That's fair.

10 Q. In other words, what we see here is it says, for example,
11 on the first item, RF which we just saw is a Recovery Filter.
12 Is that correct?

03:16PM

13 A. That is correct.

14 Q. We'll see on filter sample size that 11 filters were
15 tested, right?

03:16PM

16 A. That is correct.

17 Q. And then we see mean, which is the average result for those
18 filters, right?

19 A. That's correct.

20 Q. And then we have minimum and maximum which tell us what
21 was -- what one had the least and which had the highest in the
22 values, correct?

03:16PM

23 A. That is correct.

24 Q. But this is not the underlying data. We don't know what
25 happened for each of these filters based on what we have seen

03:16PM

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1 here, correct?

2 A. It's not -- yeah. It's not the individual test data. That
3 is correct.

4 Q. Let's take a look at some of the individual data.

5 MR. STOLLER: Could you pull up, Gay, please, Exhibit
6 2063.

03:16PM

7 Your Honor, I believe this is also in evidence. May
8 we display it to the jury?

9 THE COURT: Yes.

10 MR. STOLLER: Thank you.

03:16PM

11 BY MR. STOLLER:

12 Q. Mr. Tessmer, Exhibit 2063 should be in front of you which
13 appears to be an e-mail from you to Mr. Carr and Brian Hudson
14 on February 25th, 2004. Is that correct?

15 A. That is correct.

03:17PM

16 Q. And we can see under attachments there are three --
17 actually I take that back -- four different attachments that
18 are all Excel spreadsheets, right?

19 A. That is correct.

20 Q. And in the body of the e-mail you say: Rob and Brian, I
21 have attached the most current results. Is that correct?

03:17PM

22 A. That is correct.

23 Q. So if we look at -- let's go to Page 2, if we could.

24 MR. STOLLER: Thank you, Gay. And can you blow up 1
25 through -- yeah. Perfect.

03:17PM

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1 BY MR. STOLLER:

2 Q. If we look at this, these are individual test results,
3 right?

4 A. Correct.

5 Q. So, for example, if we look at the first item sample ID, it
6 says RF1 so we know we're looking at Recovery Filters, correct?

03:17PM

7 A. That is correct.

8 Q. And the first set there is 1 through 10 and then we have a
9 second set of 11 through 20. Right?

10 A. Correct.

03:18PM

11 Q. So these have been sorted into two different groups?

12 A. That is correct.

13 Q. And, in fact, we'll see under the data summary, the
14 summaries are for the two different groups on the right-hand
15 side, correct?

03:18PM

16 A. That appears to be correct. Yep.

17 Q. So let's take a look at this really quickly. What we see
18 here on this first set of data, Recovery Filter 1 to 10.

19 MR. STOLLER: And Gay, could you blow up the status
20 summary there on the side? In particular, the chart over here
21 all the way to the left starting with "average."

03:18PM

22 BY MR. STOLLER:

23 Q. So if we look at this data, sir, what we're seeing is that
24 the average pressure -- well, let's start across the top. So
25 across the top, first column identifies our filter type, right?

03:18PM

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1 A. The sample ID number, yes. Correct.

2 Q. And then we have a lot number and then a run number. Looks
3 like each of the filters except for Number 2 was run three
4 times, correct?

5 A. That is correct.

03:19PM

6 Q. Then there's a column for pressure at filter migration in
7 psi and a column for pressure at filter migration in
8 millimeters mercury, correct?

9 A. That is correct.

10 Q. Then there's a column for temperature and column for tube
11 diameter?

03:19PM

12 A. That is correct.

13 Q. So what we see here on this chart are a series of Recovery
14 Filters run through a 28-millimeter tube diameter at 37 degrees
15 Celsius plus or minus 2 degrees, correct?

03:19PM

16 A. That is correct.

17 Q. And we'll see the results of those runs in the column under
18 pressure, is that correct?

19 A. That is correct.

20 Q. And if we look all the way to the right in the small chart,
21 it says the average of those runs for these filters was 45.2
22 millimeters mercury, correct?

03:19PM

23 A. That is correct.

24 Q. And you understood at the time, and we just saw it in the
25 memo from the special Design Review Committee that the minimum

03:20PM

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1 acceptance criteria for migration resistance was 50 millimeters
2 mercury, correct?

3 A. For the characterization. We had no acceptance criteria.

4 Q. I'm asking you a different question, sir. I'm asking --

5 A. Okay.

03:20PM

6 Q. -- whether the company had established a minimum migration
7 resistance standard for IVC filters of 50 millimeters mercury.
8 Is that true?

9 A. They established that. That is true. Correct.

10 Q. And the part of what the questions that the Special Design
11 Review Committee had been asking in December of 2003 is what's
12 the basis for that, right?

03:20PM

13 A. That is correct.

14 Q. And when you ran this test, let me ask this: The test you
15 ran here is run on a device, correct?

03:20PM

16 A. Run on what?

17 Q. A device?

18 A. Correct.

19 Q. I think you call them fixtures. Is that fair?

20 A. Correct.

03:20PM

21 Q. And the fixture that was used to run this comparative data
22 test, and I understand you said the technicians ran it, but the
23 fixture or device on which this comparative test was run is the
24 same fixture that's used when Bard was testing its filters for
25 migration resistance all on their own, correct?

03:21PM

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1 A. I would think so.

2 Q. And in this test, the average migration resistance by the
3 Recovery Filter was 45.2 millimeters mercury, correct?

4 A. That is correct.

5 Q. And that number is below the minimum acceptance criteria
6 for migration resistance that Bard had for its IVC filters at
7 50 millimeters mercury, correct?

03:21PM

8 A. So this number is below 50, correct.

9 Q. And 50 was the minimum acceptance criteria for migration
10 resistance for IVC?

03:21PM

11 A. Again, for characterization tests we didn't have acceptance
12 criteria.

13 Q. That's not my question.

14 A. Okay.

15 Q. The question is whether that number is below the minimum
16 migration resistance acceptance criteria for Bard IVC filters.

03:21PM

17 A. That is correct.

18 Q. Whether this had been run alone without regard to
19 comparison of others, that's a failure as against that
20 acceptance criteria. True?

03:22PM

21 A. If we were testing against that failure criteria, that is
22 true.

23 Q. And that is the general criteria of acceptance that Bard
24 imposed for migration resistance for their Recovery Filter.

25 True?

03:22PM

5-22-18-MD 15-2641-Jones v Bard-Jury Trial-Day 5-Tessmer-Direct

1 A. Correct, for controlled experiments.

2 Q. This was a controlled experiment, was it not?

3 A. So, you know, there's different robust -- some experiences
4 are more robust and we tweak different things. That's where I
5 want to be careful with that.

03:22PM

6 Q. Sir, this was a controlled experiment, was it not?

7 A. Actually, this data set I'm seeing right here I would have
8 to look at it, the protocol and the report, to tell you
9 exactly.

10 Q. Well, we just looked at the report. What in the report
11 would you need to see?

03:22PM

12 A. So I would want to look at these averages and this data and
13 compare it to the report data.

14 Q. Okay. Well, we'll do that in just a minute.

15 A. Sure.

03:23PM

16 Q. We'll come back to that. Let's look at the column of
17 pressure at filter migration millimeters mercury. Do you see
18 that?

19 A. Yes.

20 Q. And we have highlighted every time one of the filters
21 migrated at a pressure less than 50 millimeters mercury. Would
22 you confirm that's accurate?

03:23PM

23 A. That's accurate.

24 Q. And by my count, there would be 30 runs except RF2 only ran
25 once. So I count 28 total runs. Would you agree with that?

03:23PM

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1 A. Yep.

2 Q. And I'm not going to have you do the counting, but I will
3 tell you there are 21 yellow highlights meaning 21 of the 28
4 runs failed to meet or exceed 50 millimeters mercury. Does my
5 counting look accurate to you?

03:23PM

6 A. Yes.

7 Q. And that would be 75 percent were below, is that right?

8 A. Give or take, yes.

9 MR. STOLLER: Let's go to the next page, Gay, if we
10 could, please.

03:24PM

11 BY MR. STOLLER:

12 Q. This is the -- if we see it looks like SF, so Simon
13 Nitinol, correct?

14 A. That is correct.

15 Q. And again, we're looking at it at 37 plus or minus 2
16 degrees in 28 millimeter tube, correct?

03:24PM

17 A. That is correct.

18 Q. And the average for the Simon Nitinol, which I think you
19 agreed was a predicate device for the Recovery, is 76.3
20 millimeters mercury, correct?

03:24PM

21 A. That is correct.

22 MR. STOLLER: Let's look at Page 7, if we could, Gay.
23 Thank you.

24 BY MR. STOLLER:

25 Q. And G2, I think we saw earlier when we looked at the test,

03:24PM

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1 is the Greenfield filter. Do you recall that?

2 A. Greenfield Titanium, yes.

3 Q. Again, the first one is 37 degrees plus or minus 2 at 28
4 millimeters. And we see the average is 110 millimeters
5 mercury, correct?

03:25PM

6 A. That is correct.

7 MR. STOLLER: Can we go back to Page 2, please, Gay.

8 So we looked previously -- I need you to go, if you
9 could, to the other blank two, if you would. Can you blow it
10 up a little bit, Gay, so we just see the charts?

03:25PM

11 Yeah. Get rid of some of the white space. Thank you.

12 BY MR. STOLLER:

13 Q. The first category, which are the ones we already looked
14 at, 1 through 10 were at 37 degrees plus or minus 2 degrees and
15 gave us an average of 45.2, is that correct?

03:25PM

16 A. Correct.

17 Q. Now, the second set, 11 through 20, it appears that you ran
18 a second set of Recovery Filters, correct?

19 A. That is correct.

20 Q. And this time you did it at 40 degrees, is that correct?

03:25PM

21 A. That is correct.

22 Q. Let me ask you a question. Do you know what 37 degrees
23 Celsius is in Fahrenheit?

24 A. 98.6 degrees Fahrenheit.

25 Q. I agree. Normal human body temperature?

03:26PM

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1 A. That is correct.

2 Q. Do you know what 40 degrees Celsius is equivalent to in
3 Fahrenheit?

4 A. Not exactly.

5 Q. Would you agree with me if I said it was about 104 degrees?

03:26PM

6 A. Sounds reasonable.

7 Q. So if we look at this bottom level --

8 MR. STOLLER: And Gay, can you blow up 11 through 20,
9 please.

10 BY MR. STOLLER:

03:26PM

11 Q. We see that when you heat the temperature up to about 104
12 degrees that the average resistance for millimeters mercury
13 goes to 51.5, correct?

14 A. Correct.

15 MR. STOLLER: I'm going to ask, Gay, if you could pull
16 up Exhibit 79.

03:26PM

17 And, Your Honor, I believe this is also in evidence.
18 May we display it to the jury?

19 THE COURT: Yes.

20 MR. STOLLER: Thank you.

03:27PM

21 BY MR. STOLLER:

22 Q. Sir, this is a test protocol and it's test protocol
23 TPR-04-02-02. Do you see that?

24 A. Yes.

25 Q. Do you recall this is the test protocol we pointed out when

03:27PM

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1 we looked at the test report earlier?

2 A. Yes.

3 MR. STOLLER: And let's go to move quickly, Gay, if we
4 could, to Page 5.

5 BY MR. STOLLER:

03:27PM

6 Q. If we look there, it says test procedure Phase I under 9.0,
7 do you see that?

8 A. Yes, I do.

9 Q. If we go down to 9.2.1, do you see it says: Fill the water
10 bath with water; turn on the regulator slash circulator and set
11 to 37 degree Celsius. Did I read that correctly?

03:27PM

12 A. You did.

13 Q. And that was supposed to be the temperature which this test
14 was run, correct?

15 A. For those 10 samples, yes.

03:28PM

16 MR. STOLLER: If go down to the next page, Gay, look
17 at Page 6.

18 BY MR. STOLLER:

19 Q. You will see 9.2.7. Says: Place the digital thermometer
20 probe through the tubing just above the simulated inferior vena
21 cava and verify the temperature is 37 degrees Celsius, plus or
22 minus 2 degrees Celsius. Correct?

03:28PM

23 A. That is correct.

24 MR. STOLLER: So let's go back if we could, Gay,
25 please, to Exhibit 2063.

03:28PM

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1 BY MR. STOLLER:

2 Q. So we know the test criteria is 37 degrees Celsius but you
3 turned it up to 40 degrees. Is that correct? According to
4 these data --

5 MR. STOLLER: I'm sorry. I'm getting ahead of you. I 03:28PM
6 apologize, Gay.

7 BY MR. STOLLER:

8 Q. Test criteria was 37 degrees at which we returned a result
9 of 45.2 degrees mercury. Then when it turned up to 40 degrees,
10 or 104 degrees Fahrenheit, it moved up to 51.5 correct? 03:29PM

11 A. That is correct.

12 Q. And what happened -- sir, you held the position of an
13 engineer at the time, correct? That was your title?

14 A. That's correct.

15 Q. My recollection, though, is that your degrees are in 03:29PM
16 biology and business. True?

17 A. BS in chemistry with a biochemistry emphasis and business.
18 Correct.

19 Q. And so do you have any special education or training as a
20 mechanical engineer? 03:29PM

21 A. Only on-job experience.

22 Q. Fair enough. But do you have a general understanding based
23 on your job experience what happens when you heat materials?

24 A. Well, certain materials I have a better understanding than
25 others. 03:29PM

5-22-18-MD 15-2641-Jones v Bard-Jury Trial-Day 5-Tessmer-Direct

1 Q. Was it fair to say based on your understanding of chemistry
2 and biology that when you heat materials they have a tendency
3 to expand?

4 A. That would be true in most cases.

5 Q. And so when we expanded the Recovery Filter by 3 degrees
6 Celsius it performed better in terms of migration resistance,
7 didn't it?

03:30PM

8 A. According to this data set, yes, it did.

9 Q. But if we look at --

10 MR. STOLLER: Gay, can you highlight, go to Highlight
11 2 for the bottom category of RF 11 to 20. If we look at the
12 numbers here we see a number of them over 50, but we also see a
13 number of them over 50 on these runs.

03:30PM

14 Can you display the second highlighted one that shows
15 these? Thank you. That should make it a little clearer.

03:30PM

16 True?

17 A. True.

18 BY MR. STOLLER:

19 Q. So those failed the 50 millimeters mercury standard, didn't
20 they?

03:30PM

21 A. Those were under the 50 millimeters of mercury.

22 Q. Let's go back to the filter, I'm sorry, formal report which
23 is Exhibit 1383.

24 MR. STOLLER: And Gay, can we go to Page 6, please.

25 Actually, let's start at 4 and then we'll get there.

03:31PM

5-22-18-MD 15-2641-Jones v Bard-Jury Trial-Day 5-Tessmer-Direct

1 BY MR. STOLLER:

2 Q. So 4 is where we were before which was the test results and
3 summary of data, correct?

4 A. That is correct.

5 Q. And then if we flip ahead, we'll go page by page, the first
6 page has got two diameters, 15 millimeters. The second page --
7 can we go to the next one Page 5? Apologies. Back one more.
8 Thanks.

03:31PM

9 There we also see 15 millimeter tube diameter then 18
10 millimeters tube diameter, 21 and 25, correct?

03:31PM

11 A. Correct.

12 Q. All right. Let's go to the next page, Page 6. If we look
13 at the top we see 28 millimeters at 37 degrees Celsius,
14 correct?

15 A. Correct.

03:32PM

16 Q. And we see there a mean of 47.5, correct?

17 A. That is correct.

18 Q. So again, below the 50 millimeters mercury. True?

19 A. Below 50 millimeters of mercury.

20 Q. And the SNF on the other hand is at 76.3, correct?

03:32PM

21 A. Correct.

22 Q. And the minimum there for the SNF is 65 as well. Do you
23 see that?

24 A. Yes, I do.

25 Q. And these are the results of the tests we were just talking

03:32PM

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1 about, correct?

2 A. These are the results for this, but the other data set
3 you -- the other data set I'm not sure if that data matches
4 that.

5 Q. I think you got to my next question which is if we look at
6 the sample ID we see RF 1 to 10, and 32 to 34, correct?

03:32PM

7 A. Correct.

8 Q. And sample size here says 13, right?

9 A. Correct.

10 Q. So it looks like we're looking at different data set.

03:33PM

11 Would you agree with that?

12 A. That this is a different data set from what you previously
13 showed me?

14 Q. Yes, sir?

15 A. Yeah. Could be.

03:33PM

16 Q. And if we look at the minimum millimeters mercury on this
17 one says 32.1 and the other one, I believe, said 7.9?

18 A. Okay. So different study.

19 Q. It looks like you ran it yet another time and in this case
20 again came below 50. Is that true?

03:33PM

21 A. So the mean at 37 plus or minus 2 was 47.5 which is below
22 50.

23 Q. And if we go down four lines, we have another set of RF, 11
24 to 21, and heated up to 40 degrees, correct?

25 A. That is correct.

03:33PM

5-22-18-MD 15-2641-Jones v Bard-Jury Trial-Day 5-Tessmer-Direct

1 Q. And that time we exceed 50 millimeters mercury, correct?

2 A. Yes.

3 Q. Let's look at another migration resistance test that you
4 ran, 2065. Can you go to the first page? Oh. You are still
5 working your way. Sorry. 2065.

03:34PM

6 MR. STOLLER: I'm sorry, Your Honor. This has been
7 admitted, I believe. May we show it to the jury?

8 THE COURT: Yes.

9 MR. STOLLER: Thank you.

10 BY MR. STOLLER:

03:34PM

11 Q. This is another characterization test for the Recovery
12 Filter that refers to the legs being crossed or hooks removed.
13 Do you see that?

14 A. Yes, I do.

15 Q. Were you involved in this testing?

03:35PM

16 A. Yes.

17 Q. And I'm going to skip through this one relatively quickly
18 and go straight to the results. But if we look at Page 5, and
19 at the very top at the title, Table 2, it says: Recovery
20 Filter migration resistance, and in parenthesis, 1, 2, 3, 4, 5,
21 or 6, hooks removed. Do you see that?

03:35PM

22 A. Yes, I do.

23 Q. So this was a test of what's the migration resistance if
24 one or more of the hooks are removed from the filter, correct?

25 A. That is correct.

03:35PM

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1 Q. And if we look down toward the bottom of the chart the last
2 set of data is 28 millimeter tube, correct?

3 A. That is correct.

4 Q. And what we see in the left-hand column are 1, 2, 3, 4, 5,
5 6 hooks removed and what the results are. True?

03:35PM

6 A. That is true.

7 Q. And what we see there is that if even one hook is removed
8 the average is only 33 millimeters mercury. Would you agree
9 with that?

10 A. That is correct.

03:36PM

11 Q. And if we look over at the maximum for that, it's 41.7. Do
12 you see that?

13 A. I do.

14 Q. So the results of this demonstrated that even if one of the
15 hooks of the filter is not engaged, it will fail the 50
16 millimeters mercury test. True?

03:36PM

17 A. So this doesn't have acceptance criteria, but it is below
18 50 if one of the hooks is removed.

19 Q. Let's go to Page 10, because you are saying it doesn't have
20 acceptance criteria.

03:36PM

21 A. Sure.

22 Q. Let's look at that and see the conclusion item 10.0.

23 Second bullet point says, -- remember, this test had two
24 separate tests: One test for crossed legs; one test for hooks
25 being removed. Correct?

03:36PM

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1 A. That's correct.

2 Q. So the first test was -- we didn't look at it -- was legs
3 crossed and the second test was hooks removed. True?

4 A. Correct.

5 Q. If we look just on the conclusion, second bullet point: 03:37PM

6 All recovery filters that were tested after crossing two
7 adjacent legs met the predefined NMT migration resistance
8 acceptance criteria of a 50 millimeters mercury minimum for all
9 simulated IVC diameters.

10 Did I read that correctly? 03:37PM

11 A. You read correctly, but this was an observation, and if you
12 go to the test protocol, which we looked at, it says no
13 acceptance criteria.

14 Q. Sir, I'm reading the words of a report you drafted under a
15 heading "conclusion" am I not? 03:37PM

16 A. You are.

17 Q. I read them correctly?

18 A. You read those words correctly.

19 Q. And your conclusion with the Recovery Filter with crossed
20 legs met that minimum criteria it was your conclusion that it
21 met it. True? 03:37PM

22 A. That is direct.

23 Q. And it doesn't mention here that when you lose even one
24 foot it does not meet it. It doesn't say that, does it?

25 A. It does not. 03:38PM

5-22-18-MD 15-2641-Jones v Bard-Jury Trial-Day 5-Tessmer-Direct

1 Q. I want to talk a bit, sir, about your involvement in the
2 design development testing of the G2 Filter. You were at Bard
3 when the G2 was under development. True?

4 A. Yes, I was.

5 Q. And you were involved at some level in looking at some of
6 the improvements to the G2 Filter, correct?

03:38PM

7 A. I had a very limited role, but I had to know those
8 specifications because I was developing a delivery system.

9 MR. STOLLER: Let's look at 2068, Gay.

10 And, Your Honor, I believe this is in evidence.

03:38PM

11 May we show it to the jury?

12 THE COURT: Yes.

13 MR. STOLLER: Thank you.

14 BY MR. STOLLER:

15 Q. Sir, Exhibit 2068 is an e-mail from Mr. Carr to you at the
16 top. But if we go down to the third e-mail embedded there's an
17 e-mail from you to Mr. Carr, Mr. Chanduszko and Mr. Hudson
18 dated June 8, 2004. Do you see that?

03:38PM

19 A. Yes, I do.

20 Q. It talks about filter improvement DOE. True?

03:39PM

21 A. That is true.

22 Q. And this was you doing some testing to determine the effect
23 of the hook diameter and leg span on migration resistance.
24 True?

25 A. So this e-mail is I did a DOE, so I'm not sure if I

03:39PM

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1 actually conducted this testing or if I was just running it,
2 setting up the DOE itself, the design of experiments.

3 Q. But you were involved and you were looking at -- and this
4 purpose was to look at what's the effect of increasing the leg
5 span among other things on migration resistance. True?

03:39PM

6 A. That is correct.

7 Q. And you know, sir, do you not, sitting here today, that
8 when the Recovery Filter was developed it had a wider leg span
9 than -- I'm sorry. Let me start over.

10 You know that when the G2 Filter was developed, it had
11 an increased leg span as compared to the Recovery. True?

03:40PM

12 A. Based on my preparation, yes.

13 Q. Let's look at Exhibit 1023.

14 MR. STOLLER: Can you blow up that picture, Gay,
15 please? Thank you.

03:40PM

16 BY MR. STOLLER:

17 Q. So we see here, sir, that the G2 modified design increased
18 the leg span, true, as compared to the Recovery?

19 A. Yes.

20 Q. By 40 millimeters from -- excuse me -- by 8 millimeters
21 from 32 to 40?

03:40PM

22 A. I can't read the writing on here, but I think that's
23 accurate.

24 Q. Let's go to the next page. Look at the slide there. If
25 you look at it says: Summary of features and benefits, true?

03:41PM

5-22-18-MD 15-2641-Jones v Bard-Jury Trial-Day 5-Tessmer-Direct

1 A. Correct.

2 THE COURT: Do you want this displayed, counsel?

3 MR. STOLLER: I'm sorry. I thought I had asked. I
4 apologize, please, Your Honor.

5 THE COURT: Let's display it.

03:41PM

6 MR. STOLLER: I apologize. I'm trying to move quickly
7 get through a lot of ground.

8 BY MR. STOLLER:

9 Q. So this, sir, is the second page of the document we're
10 looking at which has the title, "Summary of Features and
11 Benefits." True?

03:41PM

12 A. It appears to be.

13 Q. And the first benefit says: Increased migration
14 resistance, right?

15 A. Yes, it does.

03:41PM

16 Q. And the feature is wider leg span?

17 A. That's what it says.

18 Q. So it was your belief and understanding that increasing the
19 span of the legs would increase migration resistance. Is that
20 correct?

03:41PM

21 A. I'd have to go back to that prior e-mail to look at. I did
22 not, as far as I recall, I did not write this document.

23 Q. So you don't know one way or another?

24 A. Correct.

25 Q. Let's talk about some of the testing that Bard did with

03:42PM

5-22-18-MD 15-2641-Jones v Bard-Jury Trial-Day 5-Tessmer-Direct

1 regard to migration resistance for G2.

2 MR. STOLLER: Gay, could you put up 5303.

3 May we display it?

4 THE COURT: Yes.

5 BY MR. STOLLER:

03:42PM

6 Q. Sir, Exhibit 5303 is a G1A Recovery Filter Femoral System
7 Design Verification and Validation Report. Do you see that?

8 A. I see it.

9 Q. And you are familiar with a Design Verification and
10 Validation Report, aren't you?

03:43PM

11 A. Design Verification Validation, yes.

12 Q. And the G1A Recovery is the G2. You know that sitting here
13 today, don't you?

14 A. I don't recall that exactly that it was, but it was or not.

15 Q. Well, the jury will find out. I think the jury found out
16 already.

03:43PM

17 Let's turn to Page 15 if we could. Before we do that
18 can we go to Page 2?

19 BY MR. STOLLER:

20 Q. This is the approval form. Do you see that for this -- I'm
21 going to call it DV&D for short. Will you understand what I
22 mean?

03:43PM

23 A. Yes.

24 Q. And DV&V is short for Design Verification and Validation.
25 True?

03:43PM

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1 A. True.

2 Q. So this is the signoff for the DV&V for the G1A, correct?

3 A. It appears to be that way, yes.

4 Q. And number of people signed off on it mostly on or around
5 February 24, 2005. True?

03:44PM

6 A. That is true.

7 Q. So let's go then to Page 15. And can we look --

8 MR. STOLLER: And can you highlight for us, Gay, Table
9 19 at the bottom?

03:44PM

10 Thank you.

11 BY MR. STOLLER:

12 Q. What we see here, sir, at Table 19, is a 28-millimeter
13 filter migration resistance summary of tests. Correct?

14 A. That's what it says, yes.

15 Q. And the filter type in the first column has three filters:
16 The SNF, G1A, and the RNF. True?

03:44PM

17 A. True.

18 Q. Says: Each of them was run 30 times and then it gives us
19 some mean results. Do you see that?

20 A. Yes, I do.

03:44PM

21 Q. And the SNF mean result was 121.6; G1A 106.3; and the RNF,
22 56.5. Do you see that?

23 A. I do.

24 Q. Let's go to the next page.

25 MR. STOLLER: And Gay, would you blow up Table 21

03:45PM

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1 which is in the middle? Thank you.

2 BY MR. STOLLER:

3 Q. Again, this is Table 21. It says: 28 millimeters filter
4 migration resistance comparison. Do you see that?

5 A. Yes, I do.

03:45PM

6 Q. And towards the right hand there's an acceptance criteria.
7 Do you see that?

8 A. I do.

9 Q. Says G1A filter must be statistically equivalent or greater
10 than SNF. Right?

03:45PM

11 A. That's what it says.

12 Q. And then in the -- towards the left-hand column it gives us
13 the mean values calculated on the prior page of SNF at 121.6
14 and G1A at 106.3?

15 A. That's correct.

03:45PM

16 Q. And the result there is fail?

17 A. That's what it says, yes.

18 Q. And so this test that's DV&V found that Bard had failed the
19 acceptance criteria for migration resistance with the G1A
20 filter. True?

03:46PM

21 A. That's what this says, yes.

22 Q. I'd like to go next, if we could, to 4 -- I'm sorry. 5296.

23 MR. STOLLER: Your Honor, I believe this is in
24 evidence. May we show it to the jury?

25 THE COURT: Yes.

03:46PM

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1 MR. STOLLER: Thank you.

2 BY MR. STOLLER:

3 Q. Page 2 of the document has a document detail. It says:

4 GlA filter and femoral delivery system PPS. Do you see that?

5 A. Yes, I do.

03:46PM

6 Q. And a PPS is a product performance specification, correct?

7 A. If I recall correctly, correct.

8 Q. That sets the standards that the product must meet in order
9 to go to market, correct?

10 A. As far as I recall, correct.

03:47PM

11 Q. And this one has a release date of 4-8-2005. Do you see
12 that?

13 A. Yes, I do.

14 Q. So it looks like a little more than six weeks after the
15 document we just saw. True?

03:47PM

16 A. Correct.

17 MR. STOLLER: Gay, can we go to Page 15, please. Are
18 you able to turn that? Thanks.

19 BY MR. STOLLER:

20 Q. So if we look at this, go two more pages if you would. I
21 apologize, to Page 15 of 30.

03:47PM

22 BY MR. STOLLER:

23 Q. At the top, 6.2 says mechanical characteristics. Do you
24 see that?

25 A. Yes, I do.

03:48PM

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1 Q. If we look at the left-hand column under 6.2.1.2 IT has a
2 design characteristic of filter migration resistance?

3 A. Yes, it does.

4 Q. And if we look under the engineering specification it says
5 migration resistance of GlA and a simulated IVC diameter of 28
6 millimeters must be statistically greater than that of RNF
7 Filter. Did I read that correctly?

8 A. Yes.

9 Q. So the engineering criteria changed from what it had been
10 at the test. True?

11 A. So I don't know the complete context of these documents.
12 Is there another protocol? But if you were saying if I were to
13 look at this comparing to the other one, as far as I recall I
14 was in part of this. It looks like there's differences.

15 Q. The bar was lowered?

16 A. What's that?

17 Q. The bar was lowered. True?

18 A. It doesn't say the bar was lowered here. It says it looks
19 like SNF versus RNF.

20 Q. We looked at the results before the SNF was at 121?

21 A. Correct. Yes.

22 Q. GlA was at 126, thereabouts?

23 A. I believe so.

24 Q. And the Recovery was at 50 something, correct?

25 A. Correct.

03:48PM

03:48PM

03:49PM

03:49PM

03:49PM

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1 Q. 50 something is much lower than 121, isn't it?

2 A. That is correct.

3 MR. STOLLER: No further questions. Thank you.

4 THE COURT: Cross-examination?

5 MR. ROGERS: Yes, Your Honor.

03:49PM

6 CROSS-EXAMINATION

7 BY MR. STOLLER:

8 Q. Mr. Tessmer, when did you come work for C.R. Bard?

9 A. It was 1997, January 1997.

10 Q. When did you leave Bard?

03:50PM

11 A. I believe it was June of 2005.

12 Q. And at some point did you come back to Bard?

13 A. Yes, I did.

14 Q. And since you left in 2005, have you had any work
15 responsibilities for IVC filters?

03:50PM

16 A. No.

17 Q. So it's been around 13 years since you have had any work
18 responsibility for IVC filters?

19 A. Yeah. That is correct.

20 Q. Mr. Tessmer, when you were working for Bard in the early
21 2000s, what was the main thing that you were doing in regard to
22 IVC filters?

03:50PM

23 A. I was working on the jugular delivery system.

24 Q. And can you explain what that is?

25 A. Yeah. So the jugular delivery system is a system that's

03:50PM

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1 used. So there's a femoral approach where you would access in
2 the groin with a femoral delivery system and this delivery
3 system, because the filter had to be oriented a different way,
4 was coming from a jugular vein approach and delivering the
5 filter.

03:51PM

6 Q. So that would really be focused on the way the filter comes
7 and goes in the body, is that right?

8 A. That's correct.

9 Q. And your boss at the time, I know there was some unclarity
10 about this. But was it primarily Rob Carr?

03:51PM

11 A. That is correct.

12 Q. And did you get called in from time to time for projects
13 that were related to the Recovery Filter?

14 A. I did.

15 Q. And how would you describe the types of projects that you
16 did?

03:51PM

17 A. So mostly the things I was called in was, you know, to help
18 out with testing that sort of thing.

19 Q. And when you say you were asked to help out with testing
20 does that mean that you were the person actually running the
21 tests?

03:51PM

22 A. So the technicians ran the test and I tried to help write
23 the protocol and report.

24 Q. And when you got called in to do these tests, were you
25 aware of any tests that had been done prior to the ones that

03:52PM

~~5-22-18-MD 15-2641-Jones v Bard-Jury Trial-Day 5-Tessmer-Cross~~

1 you performed?

2 A. Yes.

3 Q. And were you involved in any of those tests as far as the
4 migration resistance testing of the Recovery Filter before the
5 ones that you did?

03:52PM

6 A. Not that I recall.

7 Q. And were all of the tests that you were asked about today
8 tests that were looking at migration in the cranial direction,
9 toward the head? Is that correct?

10 A. I believe so, correct.

03:52PM

11 Q. And were any of the tests that you were asked about today,
12 did they have anything to do with caudal migration?

13 A. No.

14 Q. And did you have any say-so or input into the specific
15 tests that were going to be run?

03:52PM

16 A. No. I was just pulled in to help out the team.

17 Q. And once the tests were completed did you write up these
18 reports and send them to others like Rob Carr?

19 A. That is correct.

20 Q. And did you have any part in the decision making process as
21 to what happened after the tests were completed?

03:53PM

22 A. No, I did not.

23 Q. And when you left C.R. Bard in 2005 did you go to a totally
24 different company?

25 A. I did.

03:53PM

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1 Q. And what year did you come back to C.R. Bard?

2 A. I think it was 2012 or something.

3 Q. Were any of the tests that you were asked about today tests
4 that were on the Eclipse Filter?

5 A. No.

03:53PM

6 MR. ROGERS: No further questions.

7 THE COURT: Any redirect?

8 MR. STOLLER: Thank you, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. STOLLER:

03:53PM

11 Q. Mr. Tessmer, Mr. Rogers just asked you whether you had any
12 input on the tests or the results of the tests. Do you recall
13 that?

14 A. If I had any input on the results of the test, yes,
15 correct.

03:54PM

16 Q. Did you have, after you conducted those tests, have
17 conversations with Mr. Carr, for example, about the test
18 results?

19 A. I don't recall exactly, but I would have, of course, I
20 would have shared any results I got from the test to Mr. Carr.

03:54PM

21 Q. Well, did you have any conversation with him after you
22 conducted the migration resistance testing in which you said
23 I'm concerned we're not meeting the 50 millimeters mercury
24 minimum acceptance criteria for these filters?

25 A. Not that I recall.

03:54PM

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1 Q. Did you have any conversation with them in which you said,
2 I'm concerned that this filter and the comparative analysis
3 does not meet the performance of its predicate devices, either
4 the SNF or Greenfield?

5 A. Not that I recall.

03:54PM

6 Q. When you were looking at the results of those tests and
7 looking towards redesigning the G2, did you have any
8 conversations with Mr. Carr or anyone on the filter franchise
9 team and say, we need to do things to make sure that this
10 problem is fixed?

03:55PM

11 A. Not that I recall.

12 Q. Did you have any conversations with any of those folks when
13 the company was going through the process of redesigning the
14 recovery to the G2 and looking a wider base and say, we need to
15 test and make sure that when we make changes to the design of
16 this filter that we don't have other adverse events that result
17 from that design change?

03:55PM

18 A. Not that I recall.

19 Q. Did you ask any questions about what's going to happen when
20 we move we take what is a 32 millimeter base in a 28
21 millimeters vena and make it 40 millimeters; hey guys, that
22 might cause some other problems we need to worry about. Was
23 there ever any conversation like that?

03:55PM

24 A. Not that I recall.

25 Q. Was there any conversation as to testing about why that

03:55PM

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1 might cause the filter to tilt?

2 A. No. That was not my responsibility.

3 Q. You were a member of the filter franchise team. True?

4 A. I do.

5 Q. Whether it was your responsibility or not, was there any
6 conversation on that team about whether that would cause the
7 filter to perforate?

03:56PM

8 A. Not that I recall.

9 Q. Was there any conversation on that team whether the changes
10 you were making to the Recovery Filter to the design of the G2
11 would cause the filter to fracture?

03:56PM

12 A. Not that I recall.

13 Q. Were there any conversations on that team as you were
14 making the change from the Recovery to the G2 that any of those
15 changes may cause the filter to have all of the different
16 problems; the fracture, the tilt, the perforation; and
17 migration?

03:56PM

18 A. Not to my recollection.

19 MR. STOLLER: No further questions, Your Honor.

20 THE COURT: Thank you, sir. You can step down.

03:56PM

21 THE WITNESS: Thank you.

22 MR. O'CONNOR: Our next witness is Doris Jones.

23 THE COURTROOM DEPUTY: Ms. Jones, if you will please
24 come forward AND raise your right hand.

25 (The witness was sworn.)

03:57PM

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1 MR. O'CONNOR: May I proceed?

2 THE COURT: Yes.

3 DORIS JONES,

4 called as a witness herein, having been duly sworn, was

5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. O'CONNOR:

8 Q. Would you introduce yourself to the jury, please?

9 A. Hi. My name is Doris Jones.

10 Q. And can I call you Doris?

03:58PM

11 A. Yes.

12 Q. I always do.

13 How do you feel right now?

14 A. Nervous.

15 Q. That's okay.

03:58PM

16 Doris, where are you from?

17 A. Savannah, Georgia.

18 Q. And how long have you lived there?

19 A. Most of my life.

20 Q. Have there been times where you left Savannah?

03:58PM

21 A. Yes.

22 Q. When were you born?

23 A. When was I born?

24 Q. Yes?

25 A. Born February 10, 1965.

03:58PM

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1 Q. Now, did you attend school in Savannah?

2 A. Yes, I have.

3 Q. Did you go to high school?

4 A. High school. Some college.

5 Q. Did you graduate?

03:58PM

6 A. Yes, I graduated.

7 Q. And then did you have any school after that?

8 A. I went to college, it was called South College for nursing.

9 Q. And did you obtain some type of certificate?

10 A. Nursing for CNA.

03:58PM

11 Q. What is that, certified nursing assistant?

12 A. Certified nursing assistant, yes.

13 Q. Do you have family?

14 A. Yes, I do.

15 Q. We met one of your daughters. What is her name?

03:59PM

16 A. Her name is Shanice Matthews. My oldest daughter name is
17 Sharese May.

18 Q. And they both have children. Why don't you tell us who
19 your grandchildren are?

20 A. My grandchildren name, the oldest one who is seven years
21 old name is Chastity Matthews. My second oldest who is three
22 years old is named Zi'Yari Matthews. The third one who is
23 about to be turning 1 the first of June is Monae Jones.

03:59PM

24 Q. Now did you raise Sharese and Shanice in Savannah?

25 A. Yes, I did.

03:59PM

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1 Q. And did you raise them as a single mom for the most part?

2 A. Yes, I did.

3 Q. Are you married now?

4 A. Yes, I am.

5 Q. What is your husband's name?

04:00PM

6 A. His name is Alfred Jones.

7 Q. When did you marry Alfred Jones?

8 A. I married him in 2003.

9 Q. Did you know him before then?

10 A. I knew him during middle school.

04:00PM

11 Q. Through middle school?

12 A. Yes.

13 Q. Did you two have a friendship or go out?

14 A. No.

15 Q. Did he ever come over to your house?

04:00PM

16 A. He came over to my house to have my father fix his car.

17 And my father somehow knew that he liked me. And my dad told

18 him, well, if you like her go up to the house. She's in the

19 house. Instead of him doing that he ran, got in his car and he

20 left.

04:00PM

21 Q. What type of impression did he make?

22 A. I called him a chicken.

23 Q. Well, now you are married to him.

24 A. Yeah.

25 Q. How is he as a husband?

04:00PM

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1 A. He's a wonderful husband.

2 Q. What about as a father?

3 A. He's great. He's a great father.

4 Q. Well, stepfather. And then how is he to your
5 grandchildren?

04:01PM

6 A. Him and his grandchildren, they get along great. They love
7 him to death.

8 Q. How do you feel about your grandchildren?

9 A. Oh. Words can't tell how I feel about my grand kids. They
10 are my world. I love them to death.

04:01PM

11 Q. What do you do in Savannah these days?

12 A. What do I do in Savannah these days? I watch my grand
13 kids while their mother goes to work and school so that they
14 can have a better life, better than what I had. I want
15 something out of life for my girls. I always told them that.
16 I want something out of life for my grand girls. If it help
17 for me to stay home be with my grand kids that's the best joy I
18 have. That's the best feeling a grand mom could have.

04:01PM

19 Q. Do you watch them every day?

20 A. I watch them every day.

04:01PM

21 Q. How do Sharese and Shanice feel about having their mom
22 watch their babies?

23 A. They love it. They love every minute of it.

24 Q. How about you? Do you like what you do?

25 A. Yes, I do.

04:02PM

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1 Q. Now, let's talk about back in August 14 of 2010. Now,
2 you've had various medical conditions over the years, correct?

3 A. Yes, I have.

4 Q. And one of the problems that we heard about is that you had
5 ulcers that would bleed from time to time?

04:02PM

6 A. Yes.

7 Q. Would you tell the jury about when you went to the hospital
8 in August? I think it was August 24, 2010?

9 A. I think it was August 14.

10 Q. That's right. You are right.

04:02PM

11 A. Because I was in there for like August through September.

12 I went to the hospital because I was having a bleeding ulcer.

13 I was real sick with a bleeding ulcer. I was throwing up

14 blood. They rushed me to the hospital. We got to the hospital

15 and I was in so much pain that they gave me some medicine for

04:03PM

16 the pain.

17 Q. Then how long were you in the hospital for?

18 A. Well, that time, from August 14 to September the 3rd.

19 Q. And did anything happen to you while you were in the
20 hospital?

04:03PM

21 A. While I was in there, I seen that my hand was swelling up.

22 And I figured it was from the needle that they put in my arm.

23 And then all of a sudden my leg my, ankle started swelling up.

24 I called and told my husband. That ankles also were swollen.

25 And he went out and got a nurse. So when the nurse came she

04:03PM

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1 called for a doctor and they took an ultrasound of my leg and
2 it was like, you have a blood clot in your leg.

3 Q. All right. So did you see a doctor about the blood clot
4 while you were in the hospital?

5 A. Yes, I did.

04:04PM

6 Q. Did the doctor talk to you about what kind of treatment
7 would be given to you for that?

8 A. Yes.

9 Q. What did the doctor tell you?

10 A. From what they told me was a stent. I didn't knew nothing
11 about no filter. The only thing I knew was a stent.

04:04PM

12 Q. You were talking about you later learned what you were
13 receiving was a Bard Eclipse Filter?

14 A. Yeah.

15 Q. And did the doctor tell you how long you would have the
16 Eclipse Filter?

04:04PM

17 A. They say it would be in me for the rest of my life.

18 Q. How did you feel about that?

19 A. I felt okay about it. It was helping me.

20 Q. And did you understand that they were putting it in there
21 because of your blood clot?

04:04PM

22 A. Yes.

23 Q. Now, Doris, why don't you tell the members of the jury just
24 briefly how you recall -- were you sedated? Did they put you
25 under before they put the filter in?

04:05PM

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1 A. No. I seen the whole thing. Only thing they -- what they
2 did was gave me some medicine so I won't feel nothing. That
3 was it. And they put long this long tube and put it right here
4 in my thigh, my groin. And they asked me while I was doing it
5 does that hurt. I told them, yes, it does. So they gave me
6 some more medicine. And after that I didn't feel anything as
7 they was putting it in my leg. That's all.

04:05PM

8 Q. So they put the filter in?

9 A. Uh-huh. Yes.

10 Q. And did you eventually leave the hospital?

04:05PM

11 A. After they put the filter in?

12 Q. Yes.

13 A. No, I was still in there for the ulcer and stuff.

14 Q. This was at Memorial Hospital?

15 A. At Memorial Hospital.

04:06PM

16 Q. Is that in Savannah?

17 A. This is in Savannah.

18 Q. Now, at some point in time you were discharged from the
19 hospital?

20 A. Yes.

04:06PM

21 Q. And then you went home?

22 A. Yes, I went home.

23 Q. Now, at some point in time later, did you find out -- did
24 you have problems that brought you back to the hospital where
25 you learned about your filter?

04:06PM

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1 A. Yes. In 2015, I got -- I was working at the police
2 station.

3 Q. Why don't you tell everybody what type of work you were
4 doing at that time.

5 A. I was doing janitorial work at the police station.

04:06PM

6 Q. For what company?

7 A. CKC. That's a janitorial cleaning company. And all of a
8 sudden, I start feeling pain in my chest and tingling in both
9 of my arms and started feeling lightheaded. So I went out to
10 the lobby and one of the secretaries told me to sit down. And
11 I asked could they find my supervisor because he was working
12 with us.

04:07PM

13 So they took my blood pressure. They said my blood
14 pressure was sky high so they called the ambulance.

15 Q. Take you to the hospital?

04:07PM

16 A. Take me to the hospital.

17 Q. Which hospital did they take you to?

18 A. Memorial Hospital.

19 Q. When was that?

20 A. That was on -- I can't remember what day it was on but I
21 knew it was in April of 2015.

04:07PM

22 Q. April 21, 2015 sound right?

23 A. Sounds right.

24 Q. So you went to the emergency room?

25 A. Yes.

04:07PM

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1 Q. And how long were you there?

2 A. I was there for a couple of hours.

3 Q. Did you talk to the doctor eventually? Did they do any
4 treatment for you?

5 A. No, they didn't.

04:07PM

6 Q. Okay. So did you talk to the doctor at some point?

7 A. I talked to the doctor and I told the doctor, I say I'm
8 tired because how long I have been there. I have been there
9 for several hours. I was tired. I had not eaten anything. I

10 have been on my foot all day. So I told him, I say, I'd like
11 to go home and lay down. They said -- he advised me not to but
12 I said I will come back. He told me to be back at 5:00 that
13 morning, and that's what I did.

04:08PM

14 Q. So you returned to Memorial Hospital the next morning.

15 That would get us to April 22?

04:08PM

16 A. Right.

17 Q. 2015?

18 A. Yes.

19 Q. And that next morning did you return at 5:00 in the
20 morning?

04:08PM

21 A. I returned at 5 a.m. in the morning.

22 Q. And when you got there, can you tell us what happened to
23 you then?

24 A. I had to start everything over again with the chest pain,
25 taking vital signs, everything. And they took me in the back

04:08PM

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1 and that's when they took an X-ray of my chest to, I guess,
2 when you have the chest pain they want to make sure everything
3 is okay.

4 Q. Did you have problems with your arms?

5 A. Yes. I had tingling in my arms.

04:09PM

6 Q. Were you still feeling faint, lightheaded?

7 A. At that point, no. I had only felt lightheaded when I was
8 at the job.

9 Q. So they did some type of imaging study for you?

10 A. Uh-huh.

04:09PM

11 Q. Yes?

12 A. Yes.

13 Q. And did the doctor talk to you about the what the X-ray or
14 the imaging study showed?

15 A. He told me that the filter that was in me, the blood clot
16 had broken loose. I don't know how to say it, but had I guess
17 moved from where it was. And it was -- I know it had broken
18 loose.

04:09PM

19 Q. Did he tell you it was near your lung?

20 A. The clot -- okay. One clot was in, I guess, another piece
21 fell off and it lodged in my chest, in my lungs.

04:10PM

22 Q. How did you feel when the doctor told you that the filter
23 had broke?

24 A. When the doctor told me that, see like everything just went
25 solid. I probably blanked out. I didn't want to hear

04:10PM

5-22-18-MD 15-2641-Jones v Bard-Jury Trial-Day 5-Jones-Direct

1 anything. I didn't want to -- it was just everything just went
2 dark for me.

3 Q. Now, Doris, let me ask you this: Going back to August of
4 2010, when you had the filter put in, did you have any reason
5 to expect or believe that it would break some day?

04:10PM

6 A. No.

7 Q. Did you expect that it would stay in place for the entirety
8 of your life?

9 A. Yes, I did.

10 Q. So when you were in the hospital in April 2015 and the
11 doctor came in and told you that the filter, we had known it
12 was an Eclipse Filter made by Bard, broke and that a piece was
13 up in your lung.

04:11PM

14 A. Right.

15 Q. Did the doctor tell you what could be done for you for that
16 filter?

04:11PM

17 A. They told me that it was too dangerous to move. It is more
18 better safe where it's at. The other piece they could remove
19 from my neck. They removed that from my neck. But the one
20 that is lodged in my lung is more safer there than anything.
21 It's too dangerous for them to move because if that had --
22 because they would have to go through my heart to get to my
23 lungs to remove it.

04:11PM

24 Q. Now, eventually, a doctor did go in and take out the
25 filter, is that right?

04:12PM

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1 A. Yes.

2 Q. But you still --

3 A. Had that one piece in my lung.

4 Q. And you have had that piece the entire time?

5 A. Yes.

04:12PM

6 Q. How do you feel about that?

7 A. I'm scared.

8 Q. Why?

9 A. For one, I have my grand babies with me all the time. They

10 are going on one and three years old. Who is to say I could be 04:12PM

11 sitting down with my grand kids and all of a sudden I fall

12 over? I don't know what's going on. My grand kids don't know

13 what's going on. They can't run out the house. They can't

14 call on the phone and say oh, my grandmother need help. The

15 only way somebody going to know that something is wrong unless 04:12PM

16 my daughters come home from work. And how would that make them

17 feel if their mother on the floor and don't know what's going

18 on and having my grand babies sit there and just look at me and

19 be crying and don't know if it is -- this is a terrible thing.

20 It hurts. It really hurts my heart for me to have my grand 04:13PM

21 kids like that.

22 Q. Do you tell anybody in your family that you are scared?

23 A. No.

24 Q. Why?

25 A. For one, I'm supposed to be their mother. I'm supposed to 04:13PM

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1 be their supporter. I'm supposed to be strong in their eyes;
2 not weak, strong so they could be strong for their girls and
3 their family.

4 Q. Have you seen a doctor about taking out the filter?

5 A. No, I haven't.

04:14PM

6 Q. Why?

7 A. I'm scared.

8 Q. Is that because the other doctor told you that it would be
9 okay then?

10 A. Yes.

04:14PM

11 Q. Now, Doris, if there were doctors that are now specializing
12 in taking filters out of places like pulmonary arteries, would
13 you consider going seeing such a doctor?

14 A. I would consider going seeing one.

15 Q. And why?

04:14PM

16 A. I would consider going to see them. I would consider
17 hearing him out. As far as having it taken out, I can't say
18 yes or no if I would do that because if you tell me it's safer
19 where it's at, why would I risk my life you going into my chest
20 through my heart just to get a filter out. Either way I'm
21 gone, something is happening to me.

04:14PM

22 Q. But would you at least go see a doctor. If you had your
23 choice and it was safe would you want that filter piece out of
24 you?

25 A. Yes, I would.

04:15PM

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1 MR. O'CONNOR: Gay, can you put up Exhibit 4407?

2 Your Honor, may I approach Doris Jones with a paper
3 copy so she can go through and identify this?

4 THE COURT: Yes. Don't talk when you are up here.

5 They can't hear you. Just hand it to her. We need to have you 04:15PM
6 talk into the mic.

7 MR. O'CONNOR: Thank you.

8 BY MR. O'CONNOR:

9 Q. Do you recognize that document?

10 A. I can't see it. I don't have my glasses with me. They 04:16PM
11 are -- I'm sorry -- in the chair.

12 MR. O'CONNOR: May I approach with glasses?

13 THE COURT: Yes.

14 BY MR. O'CONNOR:

15 Q. Take a minute and look at those pages if you would, please. 04:16PM

16 A. Okay.

17 Q. Can you tell the members of the jury what you are looking
18 at, Exhibit 4407?

19 A. The bill from the hospital.

20 Q. And do those dates correspond with the dates that you were 04:17PM
21 in the hospital to have your filter removed?

22 A. Yes. Yes.

23 MR. O'CONNOR: May I publish -- move to admit Exhibit
24 4407 at this time, Your Honor.

25 THE COURT: I believe it's already in evidence. 04:17PM

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1 MR. O'CONNOR: All right. Thank you.

2 BY MR. O'CONNOR:

3 Q. And Doris, is the amount on the last Page 21,198.45?

4 A. Yes.

5 Q. Is that the amount of the bills that were for the
6 hospitalization to get your filter out?

04:17PM

7 A. Yes.

8 MR. O'CONNOR: May we publish to the jury? I'm sorry,
9 Your Honor.

10 THE COURT: Yes.

04:18PM

11 MR. O'CONNOR: Gay, could you scroll page by page for
12 the jury, please.

13 May I just consult with my lawyers here, Your Honor?

14 THE COURT: You may.

15 MR. O'CONNOR: That's all the questions I have, Your
16 Honor.

04:18PM

17 THE COURT: Okay. We're going to go ahead and break
18 at this time, Ladies and Gentlemen. We will plan to resume
19 tomorrow morning. Please remember not to discuss the case and
20 we'll see you in the morning.

04:18PM

21 (Jury out at 4:19 p.m.)

22 THE COURT: Please be seated.

23 All right. Counsel, do you have an allocation for the
24 video time this afternoon?

25 MR. STOLLER: I have 29 minutes for Avino as being

04:19PM

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1 designated to plaintiff.

2 MR. CLARK: Your Honor, for plaintiff on Avino, 14 and
3 29 for the defendant.

4 THE COURT: 29 minutes to the defendant on Avino.

5 Do you agree, Ms. Helm?

04:19PM

6 MS. HELM: I do, Your Honor.

7 THE COURT: Okay. All right. Counsel, as of this
8 evening plaintiff has used 19 hours, 27 minutes. Defense has
9 used five hours and 50 minutes.

10 Let me mention something on the issue that was raised
11 this morning about other health conditions in the plaintiff. I
12 looked at the cases that were cited. They, I think, stand for
13 the unremarkable proposition that evidence of a plaintiff's
14 other injuries is admissible to show that the current issue
15 injuries were not caused by the defendants' negligence.

04:20PM

04:21PM

16 The -- one of the arguments you made this morning, Ms.
17 Helm, was that Mr. O'Connor referred to pain and suffering in
18 the opening statement. We searched the opening statement and
19 couldn't find that. So we don't know exactly what was referred
20 to.

04:21PM

21 We did go through a discussion about what was out and
22 what was in in terms of the plaintiff's case when we were
23 talking about the slide that the defense was going to use in
24 opening. Plaintiff stated that the dizziness claim was out of
25 the case but that there would not be an objection to dizziness

04:21PM

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1 being a reason for her being admitted to the hospital.

2 Plaintiff also stated that they agreed that fatigue
3 was fair game. That's part of the claim that's being made;
4 that shortness of breath was out of the case and was not going
5 to be claimed; that there would be no testimony of a shortened
6 life expectancy from any expert but that they did intend to
7 claim damages for the uncertainty created by the presence of
8 the filter.

9 What I'd like to do tomorrow morning, if plaintiff
10 would do it, is be as specific as you can concerning the
11 categories of damages you intend to claim so that I can make
12 sure I'm thinking about that in terms of whether or not any of
13 this evidence is admissible. And then we'll continue the
14 discussion at that point in time.

15 The other thing I would like to do is plan to talk
16 about the final jury instructions on Friday at 4:30 when we get
17 to the end of the day. That's the only day between now and the
18 end of trial when I don't have a 4:30 hearing. So I think
19 we'll need to use that time to talk about jury instructions.
20 So please be prepared to do it by that time.

21 Is there a question?

22 MR. STOLLER: I'm sorry, Your Honor. Did you say
23 Thursday?

24 THE COURT: Friday.

25 MR. STOLLER: Friday.

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1 THE COURT: Friday at the end of the day at 4:30.

2 Sorry to make it that time, but that's the only time I have got
3 to talk about jury instructions.

4 We've got a sentencing at 4:30 in another hearing, so
5 we will need to break. Were you going to raise something Mr.
6 North.

04:23PM

7 MR. NORTH: I would like to respectfully ask the Court
8 to instruct the plaintiff's attorneys one more time to school
9 their witnesses of not mentioning -- making gratuitous mention
10 about the litigation. After the Court said that this morning
11 the next expert referred to the Booker trial. I'm afraid that
12 the cumulative effect of these references are nearing us to the
13 point of having to seek relief.

04:23PM

14 THE COURT: I understand that, Mr. North, but I
15 thought the questioning was the reason the witness gave that
16 answer. The questioning was intending to tie the witness down
17 on exactly when he was looking at these Bard documents, when
18 exactly was it. He said it was before the Booker trial. I
19 don't think it would have come out but for that questioning.

04:24PM

20 I think it's good to remind witnesses, but that wasn't
21 a gratuitous comment. That was response to a very specific
22 question about when he finally looked at these additional
23 documents. But we should continue to remind witnesses.

04:24PM

24 MR. COMBS: On behalf of the plaintiffs, we have been
25 instructing our experts. But we agree with Your Honor's

04:24PM

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1 assessment.

2 THE COURT: Okay. We'll see you in the morning at
3 8:30.

4 MR. COMBS: Thank you, Your Honor.

5 (Proceeding recessed at 4:24 p.m.)

04:24PM

C E R T I F I C A T E

I, LAURIE A. ADAMS, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 23rd day of May, 2018.

s/Laurie A. Adams

Laurie A. Adams, RMR, CRR